Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 16 NOVEMBER 10, 1982 No. 45

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

U.S. Customs Service

Treasury Divisions

(T.D. 82-203)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond), Customs Form 7605; amendment of T.D. 69-171

T.D. 69-171 relating to the approval of the consolidated aircraft bond of the following principal is hereby amended as necessary to show that such principal is designated as a carrier of bonded merchandise, as noted below.

Dated: October 20, 1982.

Principal	Effective date as carrier
Aerolineas Argentinas, 9 Rockefeller Plaza, New York, NY; St. Paul Fire & Marine Ins. Co..	Sept. 15, 1982

(BON-3-01)

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 82-204)

19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144

Customs Regulations Amendments Relating to Customs Bonded Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule; Notice of Fee Schedule.

SUMMARY: To reduce costs to the public and reduce Customs staffing at bonded warehouses, this document extensively revises the Customs Regulations relating to the control of merchandise in Customs bonded warehouses by establishing an audit-inspection program. The document (1) authorizes Customs to accept a joint de-

termination by the warehouse proprietor and the carrier, cartman or lighterman, or weighter, gauger or measurer, regarding the quantity of goods entered or withdrawn from a warehouse; (2) provides for release of merchandise directly to the proprietor by Customs officers at the customhouse rather than at the warehouse; and (3) provides district directors with the authority to allow warehouse proprietors to affix and break Customs seals. In addition, the document (1) provides fees to establish, alter, or relocate a bonded warehouse and an annual fee to reimburse the Customs appropriation for services rendered to the warehouse community; (2) provides procedures for the granting of the right to operate a bonded warehouse based on the qualifications, character, and experience of the applicant; and (3) provides procedures for the suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

EFFECTIVE DATES: This rule is effective on December 1, 1982; The fees to establish, alter, or relocate a bonded warehouse are effective on November 1, 1982. The annual fee to reimburse the Customs appropriation for services rendered to the warehouse community is effective on December 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Audit aspects: Joseph Palmer, Regulatory Audit Division (202-566-2812).

Operational and fee aspects: John Holl, Office of Inspection (202-566-5354).

Bonding aspects: William Rosoff, Carriers, Drawback and Bonds Division (202-566-5856).

Legal aspects of entry: Benjamin Mahoney, Entry Procedures and Penalties Division (202-566-5765).

Economic aspects: George Deyman, Duty Assessment Division (202-566-8121).

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Through the years procedures adopted by Customs have changed dramatically in an attempt to keep pace with cargo carrying jets, millions of entering passengers, and a workload of 4.5 million commercial transactions per year. Clearly Customs has adjusted, in many ways, to challenges posed by increases in population, commerce, and the breakthroughs in modern technology relating to the processing of cargo.

Although many changes have taken place, one segment of Customs operations has not changed since the time of sailing ships. This segment is the Customs bonded warehouse operation.

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. Authority for establishing bonded warehouses is set forth in sections 311, 312, 555, and 556, Tariff Act of 1930, as amended (19 U.S.C. 1311, 1312, 1555, 1556). Part 19, Customs Regulations (19 CFR Part 19), sets forth the provisions relating to Customs bonded warehouses and the control of merchandise in these warehouses.

Upon the entry of goods into a bonded warehouse, the importer and warehouse proprietor are subject to liability under their Customs bond. This liability is cancelled when the goods are:

1. Exported;
2. Withdrawn as supplies for a vessel or aircraft in international traffic;
3. Destroyed under Customs supervision; or
4. Withdrawn for consumption in the United States after the payment of duty.

The following eight different types or classes of Customs bonded warehouses are authorized under section 19.1, Customs Regulations (19 CFR 19.1).

Class 1. Premises owned or leased by the Government and used for the storage of merchandise undergoing Customs examination, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises is held under "general order." When these premises are not sufficient or available for the storage of seized or unclaimed goods, they may be stored in a warehouse of class 3, 4, or 5.

Class 2. Importer's private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of Class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it is also known as a private bonded warehouse.

Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise.

Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk.

Class 5. Bonded bins or parts of buildings or elevators to be used for the storage of grain.

Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to Internal Revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

Class 7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision, and at the expense of the proprietor.

All imported merchandise may be entered for warehousing except perishables and explosive substances other than firecrackers.

Full accountability for all merchandise entered into a Customs bonded warehouse must be maintained and merchandise must be inventoried on a regular basis.

Merchandise in a Customs bonded warehouse may, with certain exceptions, be transferred from one bonded warehouse to another in accordance with the provisions of sections 19.15, 19.20, 19.24 and 144.34, Customs Regulations (19 CFR 19.15, 19.20, 19.24, 144.34).

Basically, merchandise placed in a Customs bonded warehouse, other than Class 6 or 7, may be stored, cleaned, sorted, repacked, or otherwise changed in condition but not manufactured (19 U.S.C. 1562).

Articles manufactured in a Class 6 warehouse must be exported under Customs supervision. Waste or byproducts from a Class 6 warehouse may be withdrawn for consumption upon payment of applicable duties.

Imported merchandise may be stored in a Customs bonded warehouse for a period of 5 years (19 U.S.C. 1557(a)).

Customs present and past operations for controlling bonded warehouses are based on the premise that effective control requires the physical presence of a Customs officer.

According to an October 1980, Customs Headquarters study, this method of operation costs the economy of the United States $10 million in annual recurring costs. The study indicated the annual recurring cost is comprised of the following:

a. Approximately $8.4 million in reimbursable charges assessed against the warehouse owners, operators, and proprietors by Customs;

b. Approximately $1.6 million in non-reimbursable Customs appropriation funding.

Additionally, according to the study, this method of operation was determined to require 509 authorized positions (390 reimbursable, 119 non-reimbursable) which represented 3.5% of the Customs employment ceiling. These 390 reimbursable positions could not be converted to non-reimbursable positions to fulfill Customs responsibilities in other higher priority areas.

The development of an alternative approach for controlling warehouse operations is not new to Customs. In December 1964, a report titled *An Evaluation of: Mission Organization Management,* more commonly known as the "Stover Report," commented on the organization and management of the Bureau of Customs and recommended some actions which affected warehouse operations.

These recommendations were extensively reviewed within Customs following the issuance of the Report. However, no action was taken at that time to implement the recommendations.

In a report dated December 16, 1974, issued to the Commissioner of Customs, the General Accounting Office stated:

> The U.S. Customs Service employs warehouse officers to maintain physical custody of goods in bonded warehouses. We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.

After an extensive review of the control of merchandise in bonded warehouses, and a pilot test conducted in Philadelphia, Pennsylvania, and Baltimore, Maryland, Customs was of the opinion that the system for controlling merchandise should be changed to one adopting a system of annual reporting by the warehouse proprietor with periodic inventory, spot checks, and audits by Customs. Accordingly, by notice published in the Federal Register on March 4, 1982 (47 FR 9225), Customs proposed such a system and invited public comments on the proposal.

It is Customs opinion that the audit-inspection program will provide relief to the private warehouse community by alleviating an extensive cost burden and provide increased flexibility of operations for warehouse proprietors since they need not await arrival of Customs officers to conduct supervision. This is a particularly important consideration to the warehouse proprietors if removals must be made on a weekend, holiday, or after normal business hours.

The regulation will apply only to control of merchandise within bonded warehouses. It will not apply to warehouse related transactions outside warehouses, such as supervision of exportations. Those transactions will be supervised under current procedures as they have been in the past. Duty-free stores are an example of an area where Customs procedures for transactions outside the warehouse remain unchanged.

With respect to duty-free shops, merchandise will continue to be examined and inspected as necessary for entry into the warehouse and to close out in-bond movements. After merchandise has been removed from a warehouse for exportation, delivery to the purchaser and exportation will be physically supervised to the extent required under Customs duty-free shop procedures.

These procedures call for Customs to supervise all exportations from duty-free shops located on U.S. borders. Supervision of expor-

tations from airport duty-free shops will be conducted at the discretion of the district director. Export supervision will continue to be reimbursable by the duty-free shops separate from and in addition to the annual renewal fee (through which Customs would accept reimbursement to the Customs appropriation for costs related to audits, spot checks, etc. within warehouses).

There will be no physical supervision, except on a spot check basis, of the deposit, withdrawal, or removal of goods in or from duty-free shop warehouses, or of manipulation that occurs within the warehouse. The proprietor will be responsible under the Customs Regulations and its bond for everything any other Class 2 warehouse proprietor would be responsible for under its bond.

The authority to change from the existing warehouse officer system to the audit-inspection system is contained in section 646a, Tariff Act of 1930, as amended (19 U.S.C. 1646a).

The changes proposed by the notice published in the Federal Register on March 4, 1982, set forth numerous amendments to Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), to:

1. Authorize Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer, regarding the quantity of goods entered or withdrawn from the warehouse;

2. Provide for release of merchandise directly to the proprietor of the warehouse by Customs officers at the custom-house rather than at the warehouse;

3. Provide district directors with the authority to allow warehouse proprietors to affix and break Customs seals;

4. Provide a fee to establish, alter, or relocate a bonded warehouse and an annual fee thereafter to reimburse the Customs appropriation for services rendered to the warehouse community;

5. Provide procedures for the granting of the right to operate a warehouse based on the qualifications, character, and experience of the applicant; and

6. Provide procedures for suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

Numerous comments, both in favor of and opposed to the proposed amendments, were received in response to the notice of March 4, 1982. A detailed discussion of the comments is set forth following the next two sections which provide the fee schedule for establishing, altering, or relocating a bonded warehouse, the annual fee to reimburse the Customs appropriation for services rendered to the warehouse community and the inapplicability of the delayed effective date provisions.

NOTICE OF FEE SCHEDULE

On July 10, 1980, Customs published a notice in the Federal Register (45 FR 46442), relating to the fees for processing applications for bonded warehouses. As a part of the notice published in the Federal Register on March 4, 1982 (47 FR 9225), Customs proposed a modification to the fee schedule.

The Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called "User Charges Statute", requires Federal agencies to be as self-sustaining as possible. This statute authorizes the head of each Federal agency to establish fees for services provided to identifiable members of the public. The fees must be fair and equitable, taking into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts.

Section 19.2, Customs Regulations (19 CFR 19.2), provides, in part, that an owner or lesee desiring to establish a bonded warehouse shall file a written application with the district director which, among other things, describes the premises, gives the location, and states the class of warehouse. A fee of $80 has been required to accompany the application.

Before an application may be approved, Customs must:

(1) Determine that the application is in proper form;

(2) Survey the premises to determine that all physical security requirements are met;

(3) Perform a background investigation of the applicant and the applicant's officers and employees;

(4) Prepare a report of that investigation; and

(5) Review the application, survey, and background investigation report and prepare a response to the applicant.

Section 19.3, Customs Regulations (19 CFR 19.3), relates to alterations and relocations of existing bonded warehouses. Before an application to alter or relocate an existing bonded warehouse is approved, Customs must perform the same functions as are required in connection with an application to establish a bonded warehouse, except that a background investigation of the applicant and the applicant's officers and employees is not required. However, no fee presently is required to accompany an application to alter or relocate an existing bonded warehouse.

A review of the costs involved in performing these functions revealed that the $80 fee is inadequate. The current processing costs to Customs for initial applications is $820 and the cost to Customs of processing an application to alter or relocate an existing bonded warehouse is $356.

In light of the foregoing, the fee schedule for establishing, altering, or relocating a bonded warehouse will be as follows:

1. Establish a Bonded Warehouse—$820.
2. Alter an Existing Bonded Warehouse—$356.
3. Relocate an Existing Bonded Warehouse—$356.

383-553 O - 82 - 2

The new fees to establish, alter, or relocate a bonded warehouse are effective immediately.

As a part of the March 4, 1982, notice, Customs proposed an annual fee to reimburse the Customs appropriation for services rendered to the warehouse community. Customs has determined that it is necessary and appropriate for warehouse proprietors to bear the costs of the Customs supervision, including audit, inspection, and related administrative costs. This decision is predicated upon sections 312, 555, and 646, Tariff Act of 1930, as amended (19 U.S.C. 1312, 1555, 1646a). Section 555 provides that compensation for Customs employees appointed to supervise the movement of merchandise into and out of a bonded warehouse shall be reimbursed to the Government by the proprietor of the warehouse. Section 646 provides that when actions are required to be performed under the supervision of Customs officers, the degree of supervision shall be determined by the Secretary of the Treasury by regulation, or in the absence of such regulations, as the principal Customs officer concerned shall direct.

The Secretary of the Treasury has determined that the supervision of warehouse transactions required by the Tariff Act of 1930, as amended, should be performed by Customs on the basis of audits, periodic inventories, and occasional inspections. Therefore, the compensation of Customs officials performing these functions are properly borne by proprietors of the regulated warehouses.

Customs has determined that the annual cost to each warehouse proprietor to reimburse the Customs appropriation for services rendered to the warehouse community is $650. The annual fee will be due from each warehouse facility on December 1, 1982, and annually thereafter beginning January 1, 1984.

The fee itself is based on an estimated total first year cost for the program of $1.0 million, which is allocated among the 1538 existing warehouses.

The fee structure for subsequent calendar years of the audit-inspection program will be projected on the basis of the actual annual cost to Customs in the preceding fiscal year plus adjustments for any October Federal salary increases.

During the course of Customs review of the comments submitted and the total program, certain additional direct costs of the warehouse program were identified. Customs believes that these additional costs are properly reimbursable. Customs will be publishing a notice of proposed rulemaking and provide the public with an opportunity to comment with respect to these additional costs.

Inapplicability of Delayed Effective Date Provision

Because the fee schedule for establishing, altering, or relocating a bonded warehouse merely reflects the actual cost to Customs for the processing of an application and the services rendered result in conferring a benefit upon are identifiable member of the public,

Customs believes it to be in the public interest not to continue to subsidize one segment of the public by charging less than the fair cost for the services rendered. Accordingly, pursuant to 5 U.S.C. 553(d)(3), good cause is found for dispensing with the delayed effective date for the fee schedule for establishing, altering, or relocating a bonded warehouse.

Discussion of Comments

In response to the notice of March 4, 1982, one commenter stated that it believed Customs proposal to revise the bonded warehouse regulations should have been the subject of an advanced notice of proposed rulemaking (ANPRM).

An ANPRM is used at an early stage in the regulatory process when an agency is unsure of the approach to take in a particular area and various alternative approaches are viable. An ANPRM provides an early opportunity for public participation in the regulatory process. As was stated in the background portion of this document, the bonded warehouse system has been extensively studied by various groups for several years. The most recent report completed in 1980 contained several alternatives to the current method of operation. A pilot test of the proposed system has been successfully concluded. Based upon the foregoing, it was believed by Customs that an ANPRM was not necessary.

Security Concerns

Several commenters expressed concern that the removal of the Customs warehouse officer would have an adverse effect upon the security of the warehouse facility and merchandise in the warehouse and affect the enforcement of laws other than those relating to revenue collection. These commenters believe the warehouse officer helps prevent the entry into the United States through the bonded warehouse of contraband and narcotics. Indeed, many warehouse proprietors apparently are convinced that the warehouse officer, being a Government official and representing Government presence at the warehouse, serves as a deterrent to crime in general and theft of dutiable merchandise in particular.

While recognizing that some benefit may flow to the warehouse proprietor in the area of security of the warehouse, Customs does not believe the presence of the Customs officer materially adds to the security of the warehouse. The functions of the Customs officer generally relate to recordkeeping and approving of documentation for merchandise entering or being removed from the warehouse. He does not patrol the facility. Further, the presence of the officer inside the warehouse militates against him detecting crime on the outside. A criminal would have to enter the warehouse facility before he would, in fact, be aware of the officer's presence. In addition, while some warehouses have a full-time officer, a great many warehouses only require the presence of an officer for an hour or

two each day and in some cases only an hour or two each week. In these cases the impact of the officers presence as a deterrent to crime would be negligible. Further, an unarmed officer is in no better position to prevent crime than the warehouse proprietor or his employees.

With respect to crime in the warehouse resulting from illegal activity by Customs and warehouse personnel, this is more likely to occur between persons who know each other such as under the present system with an officer who has a long relationship with a warehouse proprietor and his employees than under the new system where warehouse personnel and a Customs officer will meet only on a random basis in the course of a specific inspection or audit. Moreover, since inspections and audits may be done by a team, the possibility of illegal activity is remote.

With respect to smuggling being conducted in a warehouse, it is unrealistic to believe that an officer can be at all places in a warehouse simultaneously. The movement of an officer in a warehouse is predictable, a factor which necessarily reduces deterrent value. Unannounced spot checks and audits by a team are unpredictable. In Customs view, this unpredictability more than offsets whatever deterrent value exists with an officer present in the warehouse.

Finally, normal investigations into the backgrounds of warehouse proprietors and their employees who have access to bonded merchandise has reduced, and will continue to reduce, the possibility of having persons with criminal involvement in the warehouse.

Because of the warehouse officer's limited presence at the facility and restricted functions while these, many warehouse proprietors do not consider the officer's presence as a deterrent to criminal activity. One commenter stated that "there times necessitate a guard on our facility during nonbusiness hours and a security alarmed building as well as normal security measures." The commenter continued that "actually, security is enhanced by the ability of the warehouse proprietor to have immediate access to all area (sic) of his facility in the event of fire, break-in, or response to security alarms, rather than waiting several hours in the middle of the night for a Customs officer with keys, as has happened to us."

In light of the foregoing, Customs does not believe that the minimal security benefits to a segment of the warehouse community warrant retention of the warehouse officer at the facility.

One commenter stated that the warehouse officer's presence at a bonded warehouse is perceived on an international level as assuring the integrity of the warehouse system.

Other countries employ the same controls embodied in the system adopted by this document and find them to provide satisfactory control and security without the physical presence of a warehouse officer. It is Customs opinion that the conversion from the old system to the new system will not cause alarm to countries con-

ducting business with the United States and will result in no impact on this nation's international commerce.

Recordkeeping Concerns

Several commenters stated that the recordkeeping system maintained by their businesses do not duplicate the records maintained by Customs warehouse officers. They indicated that to assume the task of preparing information previously maintained by the warehouse officer would result in additional costs to the warehouse proprietor. In addition, the commenters contend that to prepare the annual warehouse proprietor submission would be a clerical nightmare. They believe that if the system were computerized it would require extensive programing costs and if a manual system were used it would be difficult to develop.

Based upon the pilot test of the system which was conducted in Baltimore, Maryland, and Philadelphia, Pennsylvania, Customs found that certain aspects of the warehouse officer functions (e.g., recordkeeping) were easily absorbed by the administrative staff of the warehouse proprietor and resulted in no or mininal additional costs. Further, these additional recordkeeping tasks could be merged with the proprietor's inventory control system to achieve economy in operations that were not available to Customs.

During the pilot test one proprietor employed an individual to assume the duties of a warehouse officer. Customs found the new employee was paid less than half the cost of the warehouse officer and performed the recordkeeping task in a more efficient and effective manner. All warehouse proprietors under the revised system will be able to negotiate directly for the wages of any new employee rather than being required to reimburse 100% of the salary of a Federal employee plus the 37% fringe benefit surcharge. In addition, Customs officers will normally not be needed on weekends, holidays, or after normal business hours. This will eliminate the necessity of warehouse proprietors reimbursing the Government for overtime services. In addition, it should be noted that warehouse proprietors are presently obliged to maintain systems which essentially duplicate the warehouse officer's record to determine their liability for bonding purposes. While it is true that the new regulations require the maintenance of the entry folders, Customs believes that this can be done at a lower cost by the proprietors than they are paying Customs to do it under the present system.

The pilot test also indicated that warehouse proprietors were capable of preparing the annual warehouse proprietor submission from records normally maintained without imposing any significant problems. It is noted that all submissions prepared during the pilot test were prepared manually.

It should be noted that the words "entry folder" used in the NPRM have been changed in the final rule to "permit file folder". This change was made because many Customs field personnel be-

lieved that all entry documentation would be maintained by the warehouse proprietor. This is not the case. Customs will retain the original entry documentation (i.e., CF 7502, Warehouse or Rewarehouse Entry). The following documentation will be maintained by the warehouse proprietor in the permit file folder:

Customs Form 7505—Warehouse Withdrawal for Consumption
Customs Form 7506—Warehouse Withdrawal—Conditionally Free of Duty and Permit
Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit
Customs Form 5931—Discrepancy Report and Declaration
Customs Form 3461—Immediate Delivery Application
Customs Form 7521—Entry for Bonded Manufacturing Warehouse and Permit
Customs Form 3499—Application and Permit to Manipulate, Examine, Sample or Transfer Goods in Customs Custody
Customs Form 7519—Combined Rewarehouse and Withdrawal for Consumption

Certain proprietary information is listed on the above documents. In order to prevent the unauthorized disclosure of this proprietary information, a new paragraph (7) has been added to section 19.12(a). In addition, a new paragraph (8) has been added to section 19.3(e) relating to the grounds for suspension or revocation of the bonded status of a warehouse to allow suspension or revocation for unauthorized disclosure of proprietary information.

One commenter stated that preparation of the warehouse proprietor submission would result in clerical and inventory cost aggregating $3000 and $3500, respectively.

Customs agrees that some costs will be incurred. However, the pilot test disclosed that preparation of the submission could be absorbed by the administrative staff without incurring significant additional costs. Also, a majority of businesses make at least one physical inventory count each year. The purpose of tying the warehouse proprietor submission to the proprietor's business year was to avoid the necessity of making a separate inventory for Customs purposes. Customs is of the opinion that any additional costs incurred will be more than offset by savings by virtue of not paying the salary of a Customs warehouse officer.

One commenter states that it believes that recordkeeping requirements may hinder the movement of merchandise.

Customs disagrees. The methods and procedures of filing warehouse documentation have remained essentially the same with two exceptions. First, the warehouse proprietor, instead of the warehouse officers, will be responsible for recording entry transactions. Second, the proprietor will be responsible for filing an annual submission with Customs. Neither of these changes should result in a hindrance to cargo movement.

Not all commenters viewed the recordkeeping requirements as an onerous burden. One commenter states "we currently perform recordkeeping, duplicating the task of our warehouse officer. However, may we point out that we feel our recordkeeping is superior to that of our warehouse officer because it is performed by trained clerical personnel proficient in this area rather than someone unschooled in accounting/bookkeeping procedures. Furthermore, our receiving and shipping personnel are more experienced and qualified in noting quantity, exceptions, and damage to merchandise received and delivered than our warehouse officer."

One commenter believes that Customs personnel conducting spot checks and inventories will disrupt the warehouse operations and require the presence of warehouse personnel.

Customs personnel who conduct spot checks and audits will, in Customs opinion, quickly gain the experience to enable them to locate merchandise from the proprietor's locator system without requiring a significant amount of assistance from warehouse employees. While Customs officers conducting spot checks will invite warehouse officials to accompany them if they so desire, Customs will not require them to do so except in unusual situations.

Part 10 Comments

Two commenters indicated that section 10.62a relating to blanket withdrawals for certain merchandise should be expanded to allow use of the Customs Form 7512 in addition to Customs Form 7506 in making the blanket withdrawals.

The change in section 10.62a, as proposed, did not contemplate any modification of the regulations with respect to the authorization of blanket withdrawals of vessel supplies for transportation in bond and lading at a port other than the port where withdrawn. Authorizing the use of a Customs Form 7512 would expand the use of the blanket withdrawal to allow transportation to another port. While the change suggested may ultimately prove to be beneficial, it would be necessary for Customs to conduct a study of its implications. In any case, it is outside the scope of this proposal, and would have to be considered in a separate rulemaking action.

To make it clear that merchandise may only be withdrawn and transported for lading at the port of withdrawal, specific language to this effect has been included in sections 10.62 and 10.62a.

Part 19 Comments

One commenter stated that some warehouses operations are foreign owned and should not be granted permission by Customs to operate bonded warehouses in the United States.

Customs has no statutory authority to implement the request. It is a subject for legislative action.

Several commenters have stated that the removal of the warehouse officer will result in a loss of an arbiter in case of loss, shortage, or damage to goods.

The warehouse officer's use as an arbiter was never authorized by Customs and is not sanctioned. The Customs officer should only be a witness to agreements reached by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse regarding loss, shortage, or damage to goods.

One commenter proposed that the definition of a Class 2 warehouse in section 19.1(a)(2) be changed to authorize merchandise to be entered which belongs to another importer at the same address sharing a common ownership of at least 25% with the proprietor. Apparently, the owners of the Class 2 warehouse have an ownership interest in another corporation.

The second sentence of 19 U.S.C. 1555, in pertinent part, states that private warehouses "may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors" of the warehouse. Section 19.1(a)(2) merely paraphrases that statutory provision. In Customs opinion, authorizing a corporate entity different from the one which owns the warehouse to use the warehouse, even though the corporation has common owners, would be violative of the statutory provisions.

One commenter believed that the requirement that merchandise transported within the port limits be transported by a bonded cartman was an unnecessary expense and source of paperwork.

Section 565, Tariff Act of 1930, as amended (19 U.S.C. 1565), provides that "the cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond . . . for the protection of the Government against any loss of, or damage to, such merchandise while being so carted." Customs has no authority to modify the statute. Any change would be the subject of legislative action.

One commenter recommended that all existing bonded warehouses be "grandfathered" under present regulations.

Customs is unable to adopt this recommendation since it would eliminate all of the benefits to be gained through adoption of the proposal. It would increase costs because of the necessity of maintaining two sets of bonds and regulations plus auditor-inspector teams in addition to warehouse officers. The indefinite existence of two sets of regulations with two sets of bonds and procedures causes administrative and legal problems. Further, the indefinite retention of all existing warehouse officers, which is implicit in the request, would eliminate the expected cost-saving benefits of the proposal.

One commenter suggested that the proposal be expanded to permit the storage of unbonded merchandise in the bonded ware-

house or in the bonded portion of a warehouse that has both bonded and unbonded areas. Another commenter indicated that warehouse operations which have effective security and contain low risk merchandise, should be allowed to segregate merchandise by computerized records.

Sections 555, 557, 558, and 559, Tariff Act of 1930, as amended (19 U.S.C. 1555, 1557, 1558, 1559), contemplate that only merchandise in bond is to be placed in a bonded warehouse, or in the bonded area of a warehouse that has both bonded and nonbonded areas. Further, since under the audit-inspection system Customs will exercise less physical control over the bonded warehouse, Customs is of the opinion that adoption of the suggestion would be unwise.

One commenter suggested that the port directors, instead of the district directors, be given authority to handle routine matters relative to Customs bonded warehouses. Another suggested that they have joint responsibility.

These suggestions relate to internal Customs operating procedures involving delegations of authority which Customs believes should not be the subject of regulations. However, under existing delegations of authority, a district director is authorized to designate a port director to act on his behalf on routine matters. The amendments adopted by this document have no effect on the exercise of that discretion. With respect to the second comment, numerous operational and administrative problems would be created by vesting joint responsibility in a supervisor (i.e., district director) and his subordinant (i.e. port director).

One commenter requested that warehouse proprietors be authorized to use their premises as Customs bonded warehouses pending completion of a background investigation, provided the premises meets Customs requirements and the application documents are correct and complete. The stated reason for this request is that background investigations require 3 to 4 months to complete.

Customs cannot adopt this requested change. The background investigation is necessary to provide information the district director needs in deciding whether to approve the application. A temporary or interim approval cannot be given since the proprietor would acquire a property right to operate the warehouse which Customs believes could only be removed through a formal hearing to discontinue the temporary approval. Further, information from the background investigation is even more important now than in the past to the district director's decision concerning the application, since the proprietor is given much more responsibility and flexibility under this new concept and Customs physical presence at the warehouse is reduced. However, Customs recognizes that there are delays caused by background investigations and is currently undertaking administrative measures to reduce the delays.

383-553 O - 82 - 3

Several commenters requested that all proprietors be educated in the procedures, rules, and responsibilities under the new system.

Customs will make every effort to educate proprietors regarding the new warehouse system. In addition, the warehouse community is invited to call the Customs Office of the Regional Director, Regulatory Audit, or the Office of Inspection, in their area to obtain solutions for any problems that may arise. Assistance can also be obtained from the individuals listed in the "For Further Information Contact" section of this document.

Commenters have expressed concern over the possible proliferation of bonded warehouses resulting in so-called "fly by night" operators competing against existing warehouse proprietors.

Under the new system, as was done in the past, Customs will conduct an investigation into the background of the applicant as well as any employee before approving the application. If an applicant does not possess the qualifications to provide adequate service to the importing community, the application will not be approved.

One commenter indicated that the proposed rule to allow warehouse proprietors to affix and break Customs seals has nothing to do with the warehouse operation, but deals with the movement of merchandise in-bond, a bond in which a warehouse proprietor has no interest. The commenter further states that it is doubtful Customs could support a claim for liquidated damages against a carrier's bond for shortages in manifested quantities if the Customs seal is affixed or broken by other than a Customs employee.

In Customs opinion, the affixing and breaking of seals does have something to do with a warehouse operation. The interface with the warehouse operation occurs in the agreement between the carrier and the proprietor as to the quantity and condition of goods delivered or picked up at a warehouse. Further, Customs does not believe that its ability to support a claim for liquidated damages is affected by authorizing a warehouse proprietor to affix and break seals.

In the opinion of one commenter, allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor and the cartman could place Customs in a bad position in the event of a loss.

Customs is not allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor or the cartman. Customs will order goods to and from warehouses, and hold the proprietor responsible for the storage and handling thereof under the conditions of its bond. There will always be certain articles (e.g., narcotics, cash, firearms, seized records) which will never be sent to bonded warehouses for storage, but rather retained on Customs-owned premises. The selection of which goods should be sent to a bonded warehouse or stored on Customs premises will be, as it presently is, at the discretion of Customs.

One commenter indicated it was unnecessary to perpetuate the archaic provisions of proposed section 19.1 relating to the construction of bonded yards.

Section 19.1(a), as modifed by this document, does not provide very detailed requirements for bonded yards. Most of the detail was deleted in the NPRM. Further, Customs does not agree that the regulation is archaic.

With respect to proposed section 19.1(c), it is stated that the warehouse should be constructed in a manner to render it impossible for unauthorized persons to enter. One commenter asks who is an unauthorized person.

An unauthorized person would be any person not authorized by Customs or the proprietor to be in the warehouse, or any person not entitled by law or regulation to be in the warehouse.

One commenter states that it assumes that the procedures for establishing a warehouse set forth in proposed section 19.2 relate only to warehouses seeking to operate as Customs bonded warehouses after the effective date of the rule and that existing warehouses need not file new applications.

The commenter is correct. Existing warehouses need not file new applications, however, all warehouses will be required to pay the annual fee and file new bonds.

In the NPRM it was indicated that in approving an application to establish a warehouse facility under proposed section 19.2(a), Customs would determine whether the facility meets the following conditions: (i) the entry transaction level or dollar value of merchandise, or both, is of sufficient volume to warrant establishment of the facility; (ii) the warehouse facility is located 35 miles or less from the port of entry; and (iii) Customs has personnel resources available to adequately control all warehouse operations including the operation of the applicant warehouse facility within the district. If the above conditions are not met, it was indicated that the application would not be approved.

Several comments were received which objected to the 35-mile limitation. The 35-mile limit was intended only as a guide in approving applications. It was not a regulation change. Nor should it be construed as a mandatory requirement. It was only cited as one of many factors which could cause an application for a warehouse to be denied. Depending on the resources available for spot checks and audits of warehouses in a given port, it may be necessary from time to time to deny applications for warehouses distant from ports of entry. Some such applications will doubtless be approved. Customs staffing is not infinite, and geography must play a part in Customs decision whether to approve a warehouse application.

The 35-mile figure was not arbitrary. It represents the estimated distance a Customs officer in an average port, travelling through city traffic to the port limits, can travel beyond those limits in 1 hour. Thus, an average round trip to such a warehouse represents

2 hours of time lost from the productive workday of the officer. Customs must take such a loss into consideration in determining whether to approve the application. In approving applications, Customs will look at all the facts and circumstances, including the business considerations which dictate that a warehouse operation be located a substantial distance from the port.

In commenting on the provisions of proposed section 19.2(f) relating to an investigation of the qualifications, character, and experience of the applicant, one commenter stated it knows of no situation in which Customs has been able to deny a person the right to make a living for any of the reasons set forth in the proposed section.

There is a difference between a vested and an unvested right. An applicant for the right to operate a warehouse has an unvested right. There are court cases supporting the denial of a license to individuals or organizations based on qualifications, character, and experience. Customs has in the past been able to deny applications for bonded warehouses based on the qualifications, character, and experience of the applicant. The proposed change merely spells out in the regulations Customs current practice of conducting an inquiry into character, qualifications, and experience before an application is approved.

Section 19.2(a) as proposed did not include a provision prescribing when the annual fee set forth in section 19.5 must be paid. Customs has added a paragraph to section 19.2(a) and to each of the bonds in the Appendices to require payment within 14 days of the due date.

A commenter requested that the provision in section 19.3(c), relating to discontinuance of warehouses, which allows the discontinuance of one warehouse without affecting the bonded status of any other warehouse covered by a general bond, be retained. This provision, which was not in the NPRM, would relate only to bonded smelters or refiners who are specifically authorized by statute to have multiple warehouses owned by one proprietor on one general bond. Customs agrees with the commenter as to a bonded smelter or refiner and has retained the provision in section 19.17(c) of the final rule.

One commenter objected to the requirement in proposed section 19.3(d) for a proprietor to provide the district director with an employee list and to keep it updated.

The requirement for an employee list is not new. It is contained in current section 19.3(d). The list must be supplied only when requested by the district director. Customs does not believe that district directors often request such lists, and has no record of any complaint from a proprietor that supplying such a list has been an onerous burden. The list is needed by Customs from time to time to ensure the integrity of the warehouse operation.

One commenter believes that inactivity in a warehouse for 2 years should not be a cause for revoking or suspending its right to operate since business requirements may dictate that the warehouse remain inactive.

The ground for suspension or revocation in proposed section 19.3(e)(7) is that bonded merchandise has not been stored in the warehouse for 2 years, not that there has been inactivity with respect to the warehoused goods for 2 years.

An action to suspend or revoke under the provisions of section 19.3(e)(7) would lead to a "show cause" proceeding wherein the proprietor may state its case against suspension or revocation. The district director would consider arguments by the proprietor that the economic conditions of the trade require continuance of the warehouse. For example, in the case of a bonded smelting and refining warehouse the proprietor could show that metals are theoretically charged against the bond of the warehouse. The purpose of proposed section 19.3(e)(7) is to provide Customs with a means of closing a warehouse that the proprietor does not use and to force the proprietor to make a positive choice as to whether the warehouse is worth continuing.

Also, a suspension of a bond under the provisions of proposed section 19.3(b) for a stated period, whether requested by the proprietor or done by Customs, does not require reapplication for reinstatement of bonded status under proposed section 19.2. There is nothing to preclude a suspension by Customs until a time when the need arises to once again place bonded merchandise in the warehouse, providing the bond is still sufficient to safeguard the revenue.

The NPRM indicated that under revised section 19.5, each warehouse proprietor would be charged a fee to establish or relocate a warehouse facility and an annual fee thereafter which would be determined under the provisions of 19 U.S.C. 1555 and 31 U.S.C. 483a. This proposal envisioned aggregating substantially all costs associated with Customs supervision including audit, inspection, investigative, and administrative costs. These costs would then be equally divided among the total warehouse locations at the beginning of the fiscal year to determine the annual fee. The fees would be revised annually to reflect current costs and the fee would be published in the Federal Register for the next calendar year. Another alternative considered was to bill warehouse proprietors individually for the costs of services incurred by Customs at each individual warehouse.

Both the proposal and the alternative approach were the subject of numerous comments. Many commenters felt it would be unfair for them to pay a share of the total cost for an audit type system if they are not, in fact, audited. Several commenters indicated that individual billings to specific warehouse proprietors for services rendered is more equitable than using an annual fee.

Customs recognizes the validity of the commenters argument but does not believe that this method is in the best interests of the warehouse community as a whole. Because of limited Customs resources, only a fraction of the entire warehouse community will be audited each year. However, the entire warehouse community will be benefiting by saving substantial sums because of the elimination of the reimbursable warehouse officer positions.

Under the old system, in 1980 reimbursable warehouse officer costs paid by the warehouse community aggregated $8.4 million. In addition, Customs paid $1.6 million to non-reimbursable warehouse administrative support positions. The total cost of the old program was approximately $10 million. Under that system, the average cost to each warehouse proprietor was approximately $6,000 per year. The new program is estimated to cost approximately $1 million. Since there are approximately 1,500 warehouse facilities operating in the United States, its territories and possessions, the annual fee will be $650. The cost of the new system will cover only those costs to conduct audits and spot check inventories. It will not cover the cost to conduct investigations of warehouses in which fraudulent activity has been identified (i.e., if in the course of an audit fraud is discovered, the audit will be terminated and a report forwarded to the Customs Office of Investigations setting forth audit findings and requesting an investigation). The warehouse proprietors will not be charged for investigative costs.

The new warehouse program will require intense audits of warehouse facilities on a random basis. To provide for the least disruption to the warehouse facility operation, audits will be coordinated with the warehouse proprietor. To assure Customs that warehouse operations are in accordance with regulatory requirements, inspectional teams will make unannounced visits to all warehouse premises and perform spot check inventory counts and limited reviews of warehouse proprietor records. Although these reviews will not be as intense as an audit, they will provide Customs an opportunity to view warehouse proprietor compliance with the regulations. Any questionable practices uncovered during an inspectional visit may be used by the Customs Regulatory Audit Division to initiate an audit of the warehouse proprietor.

Based upon the above programs' methodology, it is clear that if Customs were to bill proprietors on an individual basis for service specifically rendered, it would result in some warehouse proprietors reimbursing Customs large sums of money to cover audit costs while other companies which were not audited would pay minimal costs for inspectional visits. Customs believes the method of equally dividing the cost to reimburse the Customs appropriation for services rendered among the entire warehouse community is the most equitable method.

However, since the fees will be revised annually based upon actual costs for the previous fiscal year, and because of the sub-

stantial concern of the warehouse community, Customs intends to evaluate the method of calculating the fees as experience is gained with the new system.

In light of the foregoing, Customs is adopting the annual fee calculation method proposed in the NPRM (i.e., aggregating the costs associated with the program and dividing the costs equally among the warehouse community) in the amount of $650.

One commenter stated that the annual renewal fee requirement would place every warehouse proprietor under a cloud since there would be uncertainty as to whether it would be allowed to continue its operations in the next year.

The commenter has misinterpreted the purpose of the annual fee. Customs only purpose in establishing the proprietor annual fee was to provide a means to collect reimbursement for the services rendered by Customs to the warehouse community during the previous year. A proprietor's warehouse operation could not be terminated by Customs at the time the fee is collected. If Customs believes a proprietor's right to operate should be suspended or revoked, it would follow the procedures set forth in section 19.3(f). To eliminate this source of confusion the word "renewal" has been deleted from the regulatory language.

One commenter believes that cost was the sole factor Customs considered in establishing a new system to control warehouse operations. In addition, the commenter indicated a willingness to reimburse Customs for all costs incurred to control its warehouse, including costs not presently reimbursed, so long as the warehouse officer remains on the premises.

While it is true that cost is one of the Government's primary and current concerns, Customs initiated the warehouse study over 3 years ago. The purpose of the study was to develop a new system which was both cost efficient and mission effective, i.e., a system that would provide protection to the revenue which was equal to or greater than the present system at a reduced cost. In addition, the new system would provide Customs with personnel savings which could be reallocated to higher priority areas. A great many warehouse proprietors apparently do not realize that the warehouse officer positions, although fully reimbursable, are counted against Customs overall personnel ceiling. Because large numbers of Customs personnel are performing warehouse functions, it is not possible to assign these personnel to tasks in other areas which have a higher priority and represent a greater threat to the revenue or to the country (e.g., interdiction of narcotics).

One commenter, citing language from the NPRM which indicated that the notice proposed to provide for release of goods directly to the warehouse proprietor by Customs officers at the customhouse, rather than at the warehouse, objected, because it believed it would be necessary to have all withdrawals "signed off" at the customhouse.

Under section 19.6(a) a warehouse officer may release goods to a proprietor only upon a permit signed by the district director. Since no warehouse officer will be present at the warehouse under the revised system, the permit of the district director extends directly to the proprietor. The purpose of the permit is to assure the district director that all duties and taxes are paid and all laws and regulations are complied with before the goods are removed from Customs custody in the warehouse.

Goods which are free of duty may be issued a blanket permit to withdraw for delivery at the same port, and removed in partial releases under section 19.6(d) without further Customs approval. It will not be necessary to travel to the customhouse to present a document each time a partial release occurs. The new system does not substantially change existing procedures on duty-free merchandise or impose any additional burden.

Several commenters believe that the realities in the transportation of cargo very often do not allow a joint determination of quantities to be made at the time of deposit of goods in, or removal of goods from, a bonded warehouse.

It must be stressed that the liability for the quantity of goods deposited in a warehouse is based on the quantity reported in the entry documentation, not on a joint discrepancy report. The joint discrepancy report is significant only as a means of reducing or adjusting the proprietor's liability from the quantity reported in the entry documentation.

However, Customs accepts the legitimacy of the comment concerning the difficulty of jointly resolving discrepancies at the time of entry or removal, and is therefore changing the language of proposed section 19.6 to allow a period of 15 days after deposit of goods in, or removal of goods from, a warehouse for the filing of a joint discrepancy report.

Based upon its own review, Customs has added a new paragraph (c) in proposed section 19.6 which indicates that when a Customs officer supervises the entry or removal of goods, the Customs officer's report of goods deposited in, or removed from, a warehouse shall determine the proprietor's (and therefore the carrier's) liability for the quantity and condition of goods so deposited or removed.

In addition, Customs has added a new subparagraph (2) to section 19.6(a) to specify that the liability of a warehouse proprietor may be modified after the deposit of goods in the warehouse by several actions which result in a change in the duty liability of the importer of the goods, including concealed shortages, casualty loss, destruction, and manipulation. The reason for allowing these modifications is that the liability for duty has been changed through various provisions of law by the decrease (and occasionally an increase in the case of manipulations) in the quantity of goods, and that the proprietor's liability for safeguarding the goods has been correspondingly changed.

Customs has also added a sentence to section 19.6(b)(1) to specify that the proprietor must obtain a signed receipt from the carrier upon removal or withdrawal of merchandise from the warehouse to gain relief from liability. The purpose of the addition is to assure that the carrier has accepted liability for the transportation of the merchandise from the warehouse.

Further, Customs has added a subparagraph (2) to section 19.6(b) to describe more clearly the status of goods for which a permit to withdraw has been issued but are not yet removed from the warehouse. In such cases, the goods must be segregated or marked to show they have already been withdrawn to permit ready identification during Customs spot checks and audits. Such goods which are duty-paid or unconditionally duty-free are deemed to be no longer in Customs custody and released to the warehouse proprietor. Other goods which have been withdrawn are deemed to be at least conditionally dutiable and therefore still in Customs custody. This subparagraph is added to draw a distinction between goods withdrawn in partial releases in proposed section 19.6(d) and goods which have been duty-paid but remain in the warehouse.

In line with this clarification, section 127.14(c)(1) is also amended to conform with section 19.6(b)(2) by deleting the words "beyond the 5-year warehouse period".

One commenter suggests that proposed section 19.6(e), which indicates that the district director may authorize a warehouse proprietor to break Customs in-bond seals, should be directive and not permissive.

Customs does not agree. The district director has the right to have Customs personnel supervise the unlading as a part of his responsibility of protecting the revenue. Accordingly, the regulation must be permissive in nature to protect the district directors authority in this area.

One commenter states that it should be allowed to put into computers the data previously maintained by the warehouse officer.

The warehouse proprietors submission may be computerized if the report generated by the computer duplicates the information contained in the warehouse officers report (CF 5213-Ledger Book) and is set forth in the same manner.

One commenter suggested that proprietors be authorized to unlade goods which arrive in a container with a broken seal before notifying the district director, as set forth in proposed section 19.6(e). The commenter believes this may be necessary to protect the goods from adverse weather conditions.

The proprietor must report the unsatisfactory condition of the seal so the district director has the option of inspection of the seal and container before unlading. In many cases, the district director may choose not to inspect the seal, and will accept a joint report of the carrier and the proprietor in lieu of physical inspection. The district director's decision will depend on many factors, including

383-553 O - 82 - 4

any financial threat faced by the proprietor or carrier or any damage to the goods. Since the district director can be telephoned, Customs sees no reason to authorize unlading when seals are found to be broken without or before obtaining approval of the district director.

One commenter suggests that reports of extraordinary shortages or damages be submitted to the port director rather than to the district director, as set forth in proposed section 19.6(e). The commenter indicates that allowing the port director to receive this information would be in the interest of an efficient operation.

Primary responsibility for receiving this information will be vested in the district director. However, the district director can, under existing delegations of authority, authorize the port director to receive this information and take appropriate action.

One commenter suggests that the language in proposed section 19.6(d)(4) to the effect that "partial releases may not be removed in a quantity of less than an entire package" be interpreted to allow the removal of single bottles from a full case.

The proposed language is based on current section 144.33, Customs Regulations (19 CFR 144.33), which, in turn, implements the first sentence of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). That section indicates that unless the Secretary of the Treasury specially authorizes a lesser amount, no merchandise shall be withdrawn from a bonded warehouse in less quantity than an entire bale, case, box, or other package. Inasmuch as no reasons were given by the commenter why the exception should be made, there is no basis on which to authorize a change in the current procedures.

One commenter indicated that as it reads proposed section 19.6, it would not be able to enter goods for warehouse and repack them into sets which are packaged in individual cartons and then subsequently withdraw the repackaged goods from warehouse.

Customs believes the commenter is misreading the proposed regulations. They do not, in any way, prohibit an importer from entering goods in one packed condition, performing a repacking operation, and withdrawing them in another packed condition. The regulations only require that (1) the repacking be done on a individual or blanket permit to manipulate, and (2) that the records required in proposed section 19.12 reflect the operation.

Several commenters requested that a "first in-first out" inventory accounting system be used in lieu of specific identification of goods in a warehouse.

Customs believes this recommendation, although beyond the scope of this regulation change, has merit. After further study and consideration, it may be the subject of future action.

One commenter requests that Customs authorize the warehouse proprietors to apply overages of imported goods to shortages of similar goods.

Customs is required by law to collect duty on imported goods and is without authority to authorize a warehouse proprietor to offset overages against shortages.

One commenter requests clarification concerning the procedure for recording transactions and recordkeeping responsibilities.

Section 19.6 sets forth the procedure for a warehouse proprietor to obtain approval from the district director to deposit, withdraw, obtain partial release, and seal goods in a warehouse. Section 19.12 relates to the proper recording of the transaction to provide Customs with a historical record to review in order to be in a position to determine warehouse proprietor compliance with the regulations. In the proper sequence of events, the warehouse proprietor would first obtain approval from the district director to deposit, withdraw, etc. goods at a warehouse, as set forth in section 19.6. He would next record the district director's approval and any related action in the company records, as required by section 19.12. Recording approval of entry and withdrawal documentation must take place at the customhouse before the movement of the merchandise.

One commenter points out that under proposed section 19.8 importers must make application for sampling, examination, or repacking of goods which must be approved by the district director. The commenter notes that in proposed section 19.11, the district director may approve a blanket application to manipulate. The commenter indicates that blanket applications should be the rule.

The blanket permit to manipulate, in proposed section 19.11, extends to a manipulation under proposed section 19.8, if it is continuous or repetitive, and the proprietor maintains the required records. Blanket permits can be approved only when the manipulation described is uniform over the period of the permit. If this were otherwise the application would not be descriptive of what the applicant is actually doing, and the applicant would be in violation of its bond. The district director must understand what the applicant will actually be doing before the application can be approved. Once a permit is given, either blanket or specific, the district director may authorize the manipulation to be performed in a warehouse without physical supervision by a Customs officer. Because of less on-site inspection, blanket permits should not be the rule but the exception. On either a blanket or specific permit, the district director has discretion to physically supervise the operation.

One commenter believes that the requirement in section 19.12(b)(2) that permit file folders be maintained in a secure area should define the security standard, and that Customs inspection of those records should be limited to regular office working hours.

The standard for a secure area for permit file folders is the same as that for goods as set forth in specification #5, Customs Standards of Cargo Security, T.D. 72–56. The purpose of the requirement is to assure that access to the folders is limited, even within a facility, to those officers and employees having a need and a right to

use the folders, so that opportunities for fraud, misuse of documentation, and negligence are limited. As discussed earlier in this document, a requirement has been set forth in section 19.12(a)(7) which indicates that proprietary information in, or proprietary information contained on, documents to be included in the permit file folders can only be disclosed to authorized persons. Section 19.3(e)(8) has been modified to provide that unauthorized disclosure is a ground for suspension or revocation of the bonded status of the warehouse.

With respect to the second part of the comment, Customs does not expect to conduct spot checks and audits of records outside the normal business day.

One commenter has suggested that flexibility be introduced in proposed section 19.12(b)(6) with respect to the marking of packages. The commenter specificially suggests that the entry number be placed on only one case on each corner of a pallet rather than on every case. Customs is of the opinion that the district director may use his discretion in this area and if he believes the revenue is adequately protected and administrative problems will not be created, he can authorize a warehouse proprietor to mark the cases as requested. However, because each situation is unique, we do not believe it is appropriate to address the question in the regulations.

One commenter stated that manipulation in warehouse should not be included on the warehouse proprietor submission.

Customs did not intend to require a listing of manipulation transactions on the warehouse proprietor submission.

PART 24 COMMENT

One commenter believes that proposed section 24.17(d) should clearly indicate the services for which Customs officers may receive reimbursement.

The commenter appears to believe that this section relates only to warehouses. This is not the case. This section relates to the determination of the fee for any reimbursable service rendered to the public whether it be clearance of aircraft, vessels, or warehouse operations. The services for which the fees are collected are so numerous and varied it is not possible to include a complete listing.

PART 113 COMMENT

One commenter recommends that the provision for approval by the Commissioner of Customs of the General Bond for Smelting and Refining Warehouses in present section 113.13(a), Customs Regulations (19 CFR 113.13(a)), be retained. Under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311) more than one warehouse, in more than one customs district, may be covered by one smelting and refining bond. The commenter states that only the Commissioner is in a position to determine whether warehouses in more than one district are adequate.

The present practice requires district directors to report to Customs Headquarters on the suitability of the proposed bonded smelter or refiner for bonded warehouse status. Since there is no provision for Headquarters personnel to conduct an on-site inspection of each of the premises to be bonded, reliance must be placed on the reports of the individual district directors. There is no practical reason why such reports cannot be sent to the district director with whom the bond is to be filed. Essentially similar discretion has already been given to district directors in the case of bonds for bonded carriers and importers that transact business is several districts and use the General Term Bond for Entry of Merchandise, Customs Form 7595. Actual supervision of a warehouse operation would be done by the district director in the district where the warehouse is located and coordinated with the district director who approved the bond.

PART 132

Present section 132.15, Customs Regulations (19 CFR 132.15), relates to withdrawals from warehouse prior to opening of any quota. The section was intended to cover the situation in which merchandise was physically removed from a warehouse at a date subsequent to the presentation of the warehouse withdrawal. In such a situation, the date of presentation, not the date of physical removal, governs any quota status or benefit. Present sections 132.11, 132.11a, and 141.68(d), Customs Regulations (19 CFR 132.11, 132.11a, 141.68(d)) fully explains the significance of the date of presentation. In light of the foregoing it is Customs opinion that section 132.15 is unnecessary. Accordingly, it is removed.

PART 144 COMMENTS

A commenter indicates that as the proprietor has complete control over goods entering or being withdrawn from warehouse, it is logical to assume that the responsibility for determining the satisfaction of liens and other charges must also be that of the proprietor since Customs would have no control over the time of release.

Determining the satisfaction of liens will be done by Customs at the time of filing the withdrawal from the warehouse, as specified in section 144.32(c). Control will be exercised at the time of filing the withdrawal rather than at the time of removal from the warehouse.

One commenter requested clarification of the language in the NPRM which, while discussing the merits of the proposed system, indicated that the proprietor would not have to wait for a Customs warehouse officer before making a withdrawal. The commenter asked whether Customs was proposing a period of time after withdrawal for the deposit of duties.

Customs was not proposing that duties could be deposited after withdrawal. Under proposed section 144.38(e), it is clearly indicated

that "when the duties and other charges have been paid, a permit . . . shall be issued and delivered to the person making the warehouse withdrawal." Once the permit is issued the proprietor would be in a position to release the goods from warehouse without a Customs officer present to supervise the removal.

During the course of reviewing the proposed regulations and comments, it was felt some additional narrative clarification was needed in the area of withdrawal versus removals. In situations where a warehouse proprietor files a blanket withdrawal and subsequently removes the goods piecemeal, the warehouse proprietor must be aware of its responsibilities in this area under the audit-inspection program. Once a blanket withdrawal is filed for all the goods, and the permit file folder is forwarded to Customs, it will still be necessary for the warehouse proprietor to accurately and fully account for all goods covered by the withdrawal but not removed from the warehouse. Further, the warehouse proprietor will be held responsible for the ultimate and proper disposition of the goods until removed from the warehouse in the manner reported to Customs.

Comments on Bond Forms

One commenter believes that paragraph 2(a) of the smelting and refining bond should be modified by eliminating the requirement that records be maintained in accordance with the regulations and substitute a requirement for maintenance of records in a manner ordinarily recorded in the industry.

Customs disagrees. A proprietor's records must be maintained in accordance with the regulations. To permit records to be maintained in a manner ordinarily recorded in the industry could result in an assortment of recordkeeping practices which would require Customs to specifically tailor its compliance check program for each business. The tailoring of the program would result in excessive audit and inspection time which would increase the reimbursable charges to the warehouse community collected each year through the annual fee.

One commenter recommends that paragraph 2(g) of the smelting and refining bond, which relates to filing with Customs a report listing an inventory of all metal in warehouse, should indicate that the report is required monthly. Customs agrees and has modified the bond accordingly.

A bonded smelting and refining warehouse proprietor recommends that paragraph 2(b) of the smelting and refining warehouse bond exempt smelters who operate under Headnote 4(b), Part 1, Schedule 6, Tariff Schedules of the United States (TSUS), from the requirement of furnishing an annual statement or require an annual statement only from smelters which claim deductions under Headnote 4(c), Part 1, Schedule 6, TSUS. The commenter

pointed out that T.D. 67-139 eliminated a requirement in section 19.19, for an annual submission.

Headnote 4(b) sets absolute deductions for ores and metal-bearing materials of copper, lead, or zinc content to be determined by chemical analysis. Headnote 4(c) sets deductions for ores and metal-bearing materials to be used instead of the absolute deductions. Headnotes 4(d), (e), and (f) set procedures for claiming those deductions, procedures for establishing plant losses in excess of the absolute deductions, and requirements for retention of plant records to support such claims. Under T.D. 67-139, section 19.19 was amended to eliminate the annual report since the tariff schedules established absolute allowances. The annual statement was, at that time, used to establish wastage requirements. The present need for an annual submission is not for the wastage factor, but for auditing purposes. In light of the foregoing, Customs believes the annual submission is necessary.

Two commenters questioned whether Customs has the authority to demand bonds which provide for reimbursement of any loss or expense connected with the discontinuance or suspension of the bonded status of a warehouse (see condition 1, Proprietors Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8, Appendix B, NPRM; and condition 2, Proprietors Manufacturing Warehouse Bond, Class 6, Appendix C, NPRM) or for reimbursement of any cost based on Customs supervision of a bonded smelting and refining warehouse and indemnification for any loss connected with a bonded smelting and refining warehouse (see condition 1, General Bond for Smelting and Refining Warehouses, Appendix D, NPRM).

Customs believes the language proposed was overly broad in scope. Customs intention was to limit liability to any expense caused by the transfer of merchandise on the discontinuance or suspension of the warehouse facility. Accordingly, Customs has now modified all three bonds to include this restrictive language.

One commenter noted that the proposed bond generally provides for liquidated damages of $100 for each infraction. The commenter indicated that the amount was excessive for what could in some cases be minor violations and should be reduced to $25. Two commenters were of the opinion that the bond should clearly state that assessments of liquidated damages are subject to mitigation.

Customs believes that $25 is an insufficient liquidated damage assessment for recordkeeping and other infractions of the regulations since daily on-site supervision over the activities of a warehouse proprietor have been relinquished. With respect to the second comment, by virtue of section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), and Part 172, Customs Regulations (19 CFR Part 172), which clearly provides for mitigation or cancellation of claims assessed against a bond, Customs is of the opinion

there is no need to provide in the bonds for the mitigation of assessments of liquidated damages.

On May 26, 1981, Customs published an ANPRM in the Federal Register (46 FR 28172), soliciting comments on a proposal to substantially change the Customs bond structure. One commenter suggested that the warehouse bonds be rewritten in the format proposed in that notice.

The project to modify the Customs bond structure is still in the developmental stage and has not yet been the subject of a NPRM. In addition, the bond format under development in that project is fundamentally different from the current bond format. To try at this point to implement a part of that project without public participation by means of comment on a NPRM would be unwise. However, because some form of revision of the bond structure will inevitably occur in the near future, and to avoid unnecessary printing costs to the public and the Government, Customs will allow the required bond forms which are set forth as appendices A through C of this document to be incorporated by reference in a manner similar to that used for the Air Carrier Blanket Bond (Customs Form 7605). The form to be used is set forth as Appendix F to this document.

Comments on Other Agency Requirements

One commenter expressed concern about the impact the elimination of the warehouse officer would have on the requirements of the Bureau of Alcohol, Tobacco and Firearms (ATF) which indicate that a Customs officer must certify the receipt of certain goods into warehouse.

Regulations contained in 27 CFR Part 252 require the Customs officer in charge of a Customs bonded warehouse or Customs manufacturing bonded warehouse to certify receipt of distilled spirits or wine transferred to such warehouses from a distilled spirits plant or bonded wine cellar. ATF regional offices currently clear a proprietor's (distilled spirits plant or bonded wine cellar) or exporter's bond covering untaxed distilled spirits or wine, or allow drawback of tax on distilled spirits, on the basis of such certification. Customs has been advised that ATF will modify its procedures to conform to the changes in this document.

The proprietor of a Customs bonded warehouse or Customs manufacuturing bonded warehouse will be required to certify that distilled spirits or wines have been received at his installation. Until transaction forms can be modified by ATF, the proprietor should use the spaces on the forms which are presently completed by Customs officers.

The transaction forms applicable to this new procedure are as follows:

1. ATF F 5100.11, Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

2. ATF F 1582 (5110.30), Drawback on Distilled Spirits Exported.

Beer, whether taxpaid or untaxpaid, may not be transferred to either a Customs bonded warehouse or a Customs manufacturing bonded warehouse, so the proposed change will not alter present exportation procedures relating to beer.

Executive Order 12291

The regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. An initial regulatory flexibility analysis was prepared and attached to the NPRM. The final regulatory flexibility analysis is attached to this document as Appendix E.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 10
Customs duties and inspection, exports, imports, petroleum.

19 CFR Part 18
Customs duties and inspection, common carriers, freight forwarders, imports, motor carriers, railroads, surety bonds.

19 CFR Part 19
Customs duties and inspection, exports, freight, surety bonds, tobacco, warehouse.

19 CFR Part 22
Customs duties and inspection, claims, imports.

19 CFR Part 24
Accounting, claims, Customs duties and inspection, imports, taxes, wages.

19 CFR Part 113
Customs duties and inspection, imports, surety bonds.

19 CFR Part 125
Common carriers, Customs duties and inspection, imports.

19 CFR Part 127
Customs duties and inspection, freight, imports.

383-553 O - 82 - 5

19 CFR Part 132
Customs duties and inspection, imports, quotas.

19 CFR Part 142
Customs duties and inspection, imports.

19 CFR Part 144
Customs duties and inspection, imports, warehouses.

AMENDMENTS TO THE REGULATIONS

Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), are amended as set forth below.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 22, 1982.
JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, November 1, 1982 (47 FR 49355)]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.62 is amended by revising paragraph (a) and paragraph (c)(2) to read as follows:

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended.* When all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 of the Tariff Act of 1930, as amended at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information:

(i) Type of oil withdrawn.

(ii) Number or other identification of sales order therefor.

(iii) Name of bonded carrier, date it received oil.

(iv) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(v) Name and location of vessel obtaining oil.

(vi) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline

from the bonded storage tank, sub-paragraphs (iii) and (iv) of this paragraph shall be deemed to be inapplicable.

* * * * * * *

(c) * * *

(1) * * *

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under subparagraph (1) of this paragraph with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

* * * * * * *

2. Section 10.62 is amended by removing the last sentence of paragraph (e).

3. Section 10.62a is amended by revising it to read as follows:

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

4. The second sentence of paragraph (c)(3) and the first sentence of paragraph (c)(4) of section 10.65 are amended by revising them to read and follows:

§ 10.65 Cigars and cigarettes.

* * * * * * *

(c)(1) * * *

(2) * * *

(3) * * * In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the

entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. * * *

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. * * *

(R.S. 251, as amended, secs. 309, 317, 555, 556, 557, 624, 646a; 46 Stat. 690, as amended, 696, as amended, 743, as amended, 744, as amended, 759, 67 Stat. 520 (19 U.S.C. 66, 1309, 1317, 1555, 1556, 1557, 1624, 1646a))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. § 18.2 is amended by revising paragraph (a) to read as follows:

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in subparagraph (2) of this section, when merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under the supervision of Customs unless the transporting conveyance is not to be sealed with Customs approved seals or the lading inspector accepts the check of the carrier as to the merchandise laden thereon. The carrier's receipt shall be given immediately to the lading inspector on the Customs in bond document covering the merchandise. In the case of a TIR carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation. ———— Name of Carrier (or Exporter) ———— Attorney or Agent of Carrier (or Exporter) ————
(Date) ————————

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

* * * * * * *

2. § 18.2(b) is amended by inserting a sentence between the third and fourth sentences to read as follows:

§ 18.2 Receipt by carrier; manifest.

* * * * * * *

(b) * * * Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter.* * *

3. § 18.3(e) is amended by substituting "Part 125" for "Part 21".

4. A new paragraph (i) is added to § 18.4 to read as follows:

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

* * * * * * *

(i) *Removal of seals.* Except as provided in § 18.3(d) and section 19.6(e) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

* * * * * * *

(R.S. 251, as amended, secs, 551, 551a, 555, 556, 557, 624, 646a, 46 Stat. 742, as amended, 743, as amended, 744, as amended, 759, 49 Stat. 1538, 67 Stat. 520 (19 U.S.C. 66, 1551, 1551a, 1555, 1556, 1557, 1624, 1646a))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Paragraph (a)(4), that portion of paragraph (c) before the colon and subparagraph (c)(3) of § 19.1 are amended by revising them to read as follows:

§ 19.1 Classes of Customs warehouses.

(a) * * *

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the district director deems it necessary, the yards shall be enclosed by substantial fences with entrance and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

* * * * * * *

(c) *Construction:* When parts of buildings are used as Customs bonded warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications:

* * * * * * *

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 x 4 inch stud framing and held in place by ⅛ x 2 inch metal coverstrips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than ¾ inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength,

to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1976.

2. Section 19.2 is amended by revising paragraphs (a), (c), and (d) and adding new paragraphs (f) and (g) to read as follows:

§ 19.2 Applications to bond; bond; annual fee.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by § 19.5 of this chapter to establish a warehouse. If required by the district director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouses facilities. A warehouse facility shall be charged an annual fee as prescribed by section 19.5 of this chapter which will be paid to the Regional Commissioner within 14 days after the due date.

* * * * * * *

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed in the form prescribed by T.D. 82-204.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.*

On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed in the form prescribed by T.D. 82-204. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and in the form prescribed by T.D. 82-204.

* * * * * * *

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualifications, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in § 19.3(e). The applicant may seek review of the decision to deny under the provisions of § 19.3(f) of this chapter within 10 days after notification.

3. § 19.3 is amended by revising it to read as follows:

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a bonded warehouse shall be accompanied by the fee required by section 19.5 of this chapter.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise. If a list has been previously furnished the proprietor shall advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days

after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2 (c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 years; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(f) *Procedure for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause.

Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the district director

shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

4. § 19.4 is amended by revising it to read as follows:

§ 19.4 Customs supervision over warehouses.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer.

5. Section 19.5 is amended by revising it to read as follows:

§ 19.5 Fees.

Each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under the provisions of 31 U.S.C. 483a. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under the provisions of 19 U.S.C. 1555. The fees will be revised annually and published in the Federal Register and CUSTOMS BULLETIN.

6. § 19.6 is amended by revising it to read as follows:

§ 19.6 Deposits, withdrawals, partial releases and sealing requirements.

383-553 O - 82 - 6

(a) (1) *Deposit in warehouse.* The district director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under Part 158, Subparts A and B, of this chapter by the district director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in section 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within two business days of agreement and provided to the district director on the appropriate cartage documents as set forth in section 125.31 of this chapter.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the district director for concealed shortages (i.e., section 158.5(a)), casualty loss (i.e., Part 158, Subpart C), destruction (i.e., section 158.43), or manipulation (i.e., section 19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy shall be promply provided to the district director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability.* When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Partial releases.*—(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law, within the same port by blanket withdrawal and thereafter removed from the warehouse in partial releases by the warehouse proprietor. Blanket withdrawals are not authorized for transportation in bond to another port. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in § 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in § 10.62(e) of this chapter.

(2) *Form distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under subparagraph (e) of this section. The original shall be retained in the warehouse proprietor's records, as provided in § 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded by Customs to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's permit file folder. Each such release shall be consecutively numbered, and the number shall appear immediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in § 144.32 of this chapter. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be within two business days provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in § 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket withdrawal through individual partial release documents before the permit file folder is transmitted to Customs under § 19.12(a)(4).

(4) *Quantity of release.* Partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to: (1) break Customs in bond seals affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse; or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

7. § 19.8 is amended by removing the words "and under the supervision of the Custom warehouse office" from the first sentence.

8. Part 19 is amended by adding a new § 19.9 to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director within two business days of agreement.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the person named in a release order under section 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 5119–A, or other Customs form as designated by the district director.

General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartmen or lightermen picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the district director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director.

9. Section 19.10 is amended by revising it to read as follows:

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the district director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

10. § 19.11(d) is amended by adding the following between the second and third sentences:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

* * * * * * *

(d) * * * The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require

the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. * * *

11. § 19.12 is amended by revising it to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs:

(3) *Extraordinary shortage or damage.* Extraordinary (one percent or more of the value of merchandise in an entry) shortage or damage shall be immediately brought to the attention of the district director; and confirmed in writing within two business days after the shortage or damage has been brought to the attention of the district director;

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall (i) review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry and (ii) file the permit file folder with Customs within 10 business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in § 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission in the form prescribed by T.D. 82-204.

(6) *Merchandise not withdrawn.* The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the district director upon receipt from Customs of the Customs Form 6043.

(7) *Disclosure of information only to authorized personnel.* The warehouse proprietor or his employees shall safeguard and shall not disclose proprietary information contained in, or proprietary information contained on, documents to be included in the permit

file folder to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the permit file folder or document relates or their authorized agent. Unauthorized disclosure shall be grounds for suspension or revocation under the provisions of section 19.3(e) of the proprietor's status as a bonded warehouse operator.

(b) *Security and storage.* The warehouse proprietor shall comply with the following security and storage requirements:

(1) *Supervision by warehouse proprietor.* The warehouse proprietor shall supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) *Inspection and security of permit file folders.* The permit file folders maintained by the warehouse proprietor shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours;

(3) *Security of warehouse.* The warehouse proprietor shall maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This shall be accomplished by meeting the standards and recommended specifications contained in T.D. 72–56 to the extent those standards and recommendations do not conflict with any local, state or Federal standard for the safe and sanitary storage of merchandise. In the event of a conflict the local, state, or Federal standard, shall control;

(4) *Bonded tanks.* All inlets and outlets to bonded tanks shall be secured with locks or in-bond seals;

(5) *Safe and sanitary storage.* Merchandise in the bonded areas shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. All trash and waste shall be promptly removed from the bonded area. No fires shall be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel;

(6) *Manner of storage.* Packages shall be received in the warehouse according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately. The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order or seizure shall be stored in

the same location and not mixed with goods covered by any other entry, general order or seizure unless approval has been given in writing by the district director for an exception from this requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

12. § 19.13(a) is amended by substituting "the district director" for "Headquarters, U.S. Customs Service".

13. § 19.13(d) is amended by removing the words "in duplicate", in the first sentence, and substituting a period for the comma after the words "district director" and by removing the remainder of the sentence.

14. § 19.13(g) is amended to read as follows:

§ 19.13 Requirements for establishment of warehouse.

* * * * * * *

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used excluslively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis.

15. §§ 19.14 (b), (c), and (d) are amended by revising them to read as follows:

§ 19.14 Materials for use in manufacturing warehouse.

* * * * * * *

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 7571 in an amount equal to double the estimated duties shall be required unless—the appropriate bond in the form prescribed by T.D. 82-204—has been given.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor.

Application To Receive Free Materials

Port of ————————, ————, 19——.

To the District Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as ————————, situated at ———————— the following described articles and materials:

Marks	Nos.	Description	Quantity	Value

(Signature) ————————
Port ————————
————, 19——.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

District Director ————————

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 7571 shall be required unless the warehouse is covered by the appropriate bond in the form prescribed by T.D. 82-204.

* * * * * * *

16. § 19.15(a) is amended by substituting the word "Customs" for "a Customs officer" in the last sentence.

17. § 19.15(j) is amended by substituting the words "certified by the warehouse proprietor" for "verified by the Customs warehouse officer in charge of the warehouse" in the first sentence.

18. The first and last sentences of paragraph (a), paragraphs (b) and (c), the last sentence of paragraph (g)(1), and the "Application and Permit for Transfer of Scraps, Cuttings, and Clippings" in paragraph (h) of § 19.16 are amended by revising them to read as follows:

§ 19.16 Cigar-manufacturing warehouses.

(a) *Manufacture of cigars under section 311, Tariff Act of 1930, as amended.* Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended, shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under the warehouse proprietor's locks pending its withdrawal for use in the manufacture of

cigars. * * * The cigars so returned shall be verified by the warehouse proprietor against the schedule which shall be certified by him as to the cigars returned, and the original and one copy returned to the taxpayer who returned the cigars.

(b) *Entry of Cigars.* Upon the removal of cigars from the warehouse the proprietor shall make appropriate entry in his records of the quantity and class of the cigars.

(c) *Record.* A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept by the warehouse proprietor.

* * * * * * *

(g) * * *

(1) * * * The taxes covered by the return shall be secured by the Proprietor's Manufacturing Warehouse Bond in the form prescribed by T.D. 82-204.

* * * * * * *

(h) * * *

Application and Permit for Transfer of Scraps, Cuttings, and Clippings

Port of ————————————
————, 19——.
The District Director:

Sir: Application is hereby made to transfer —— pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to ——, factory No. ——, district ———, state of———.

————————————————————
Proprietor of Bonded Manufacturing Warehouse, Class 6
Port of ————————————, ————, 19——.

The above application is hereby granted.

District Director ————————————————
Port of ————————————, ————, 19——.

I hereby certify that —— pounds of scraps, cuttings, and clippings of tobacco, upon which duty has been paid have been delivered from the bonded manufacturing warehouse, class 6, of —— for transfer to ——.

————————————————————
Warehouse Proprietor ————————————

19. Paragraphs (a), (c), (e) and the first sentence of paragraph (g) of § 19.17 are amended by revising them to read as follows:

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended,[22] to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Schedule 6, Part 1 or 2, Tariff Schedules of the

United States (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by section 19.5.

* * * * * * *

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the district director approves such discontinuance and the proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

* * * * * * *

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Customs Form 7555 shall be filed with each warehouse entry unless a blanket smelting and refining bond in the form prescribed by T.D. 82-204 has been filed. The district director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

* * * * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each Regional Director, Regulatory Audit involved, by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants * * *.

20. Section 19.19 is amended by revising the third sentence of paragraph (a) and the first sentence of pargraph (b) to read as follows:

§ 19.19 Manufacturer's records; annual statement.

(a) * * * If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section * * *

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the Regional Director, Regulatory Audit for the district in which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the

smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by section 19.12. * * *

21. Section 19.21(b) is modified by adding "§ 19.4 and" before the words "the commercial practice".

22. § 19.29 is amended by revising it to read as follows:

§19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 161.1 of this chapter.

§ 19.34 [Amended]

23. § 19.34 is amended by substituting "appropriate Customs officer" for "supervising Customs agent" in the third sentence of the section.

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 501, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended 759, as amended, 65 Stat. 290, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a, 31 U.S.C. 483a))

PART 22—DRAWBACK

§ 22.28(d) is amended by revising it to read as follows:

§ 22.28 Continuous custody.

* * * * * * *

(d) *Merchandise entered for warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, 65 Stat. 290 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1624, 1646a))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. Section 24.12(a)(1) is amended by removing the paragraph and marking it "Revised".

2. The first and fourth sentences of paragraph (c) and the first sentence of paragraph (f) of § 24.13 are amended by revising them to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

* * * * * * *

(c) *Purchase of seals.* Bonded carriers of merchandise, commercial associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. * * * Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. * * *

(f) *District director approval required.* In-bond seals may be purchased only by a Customs bonded warehouse proprietor, a Customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. * * *

3. § 24.17(d) is amended by revising it to read as follows:

§ 24.17 Other services of officers; reimbursable.

* * * * * * *

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Chirstmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11¼ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319

Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,896=137 percent.

(1) The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the em-

ployee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.*) and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges.

* * * * * * *

(Sec. 5, 36 Stat. 901, as amended, secs. 451, 555, 556, 46 Stat. 715, as amended, 743, as amended, 68A Stat. 416, as amended (5 U.S.C. 5332, 5504, 5542, 5545, 5546, 6101, 19 U.S.C. 267, 1451, 1555, 1556, 26 U.S.C. 3111); R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 113—CUSTOMS BONDS

1. § 113.13 is amended by removing paragraph (a) and marking it "Reserved" and by substituting "*Public gauger bond.*" for the paragraph heading in paragraph (b).

2. § 113.14(a) is amended by revising it and by adding new paragraphs (hh) and (ii) to § 113.14 to read as follows:

§ 113.14 Bonds approved by the district director. * * *

(a) *Proprietor's Warehouse Bond.* Proprietor's Warehouse Bond, in the form set forth in T.D. 82-204 in the amount of $5,000 on each building or area covered, but not to exceed $50,000 on all buildings or areas, unless the district director believes additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

* * * * * * *

(hh) *Proprietors Manufacturing Warehouse Bond, Class 6.* Proprietors Manufacturing Warehouse Bond, Class 6, in the form prescribed by T.D. 82-204 in such amounts as the district director deems necessary, but not less than $5,000 on each building or area and not more than $50,000 on all buildings or areas.

Buildings connected by loading platforms or sheds shall be considered as separate buildings.

(ii) *Blanket smelting and refining bond.* Blanket smelting and refining bond in the form prescribed by T.D. 82-204 in such amount as the district director deems necessary.

Sufficient copies of the bond shall be submitted to enable the district director to transmit one to each port at which the principal seeks to conduct business.

3. § 113.27 is amended by removing it and marking the section "Reserved".

4. § 113.39(b) and the "Power of Attorney and Agreement" which appears after the colon in § 113.39(b) are amended by substituting a reference to "Treasury Department Circular No. 154, Revised, dated July 1, 1978" for the reference to "Treasury Department Circular 154 dated October 31, 1969, as amended" in § 113.39(b) and the reference to "Treasury Circular No. 154, dated October 31, 1969, as amended" in the "Power of Attorney and Agreement".

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a; 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a))

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. Section 125.31 is amended by revising it to read as follows:

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7502-A—Warehouse or Rewarehouse Entry (Permit).

(c) Customs Form 7505-A—Warehouse Withdrawal for Consumption (Permit).

(d) Customs Form 7506—Warehouse Withdrawal Conditionally Free of Duty and Permit.

(e) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

2. § 125.33(b) is amended by revising it to read as follows:

§ 125.33 Procedure on receiving merchandise.

* * * * * * *

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 565, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 747, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1565, 1623, 1624, 1646a))

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Section 127.14(c)(1) is amended by revising it to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

* * * * * * *

(c) * * *

(1) Merchandise upon which all duties and charges have been paid.

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a))

PART 132—QUOTAS

Part 132 is amended by removing section 132.15.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 142—ENTRY PROCESS

Bond Rider "R" which is set forth is § 142.5 is amended by removing the comma from between the words "default" and "plus" in the third paragraph of the rider.

(R.S. 251, as amended, sec. 623, 46 Stat. 759, as amended (19 U.S.C. 66, 1623))

4. Section 144.34(a) is amended by revising it to read as follows:

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same

port under Customs supervision and at the expense of the importer upon his written request to the district director, who shall issue an order for such transfer on Customs Form 6043. However, the district director may require the filing of a rewarehouse entry under section 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see section 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in section 19.6 of this chapter.

5. § 144.38(e) is amended by revising it to read as follows:

§ 144.38 Withdrawal for consumption.

* * * * * * *

(e) Permit for release of merchandise. When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7505–A shall be issued and delivered to the person making the warehouse withdrawal.

6. Part 144 is amended by adding a new § 144.39 to read as follows:

§ 144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

7. § 144.41(g) is amended by revising it to read as follows:

§ 144.41 Entry for rewarehouse.

* * * * * * *

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original warehouse entry bond period.

* * * * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a; 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646(a))

Appendix A.—Proprietor's Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8

No. ——

Know all men by these presents that ——— of ———, as principal, and ———, of ———, and ———, of ——— as sureties, are held and firmly bound into the United States of America in the sum of ——— dollars ($———), for the payment of which we bind ourselves, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ————, 19——.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District ———, at the place and for the purposes specified below, namely:

Location (number, street, city and state)	Class (specify class 2, 3, 4, 5, or 8)	Purpose

Now, therefore, the condition of this obligation is such that—

1. *Agreement to secure against loss.* If the principal is authorized to operate a bonded warehouse under 19 U.S.C. 1565, obligors agree to reimburse the United States for any loss or expense connected with or arising from the deposit, storage, manipulation, or removal of merchandise in the facility, including an expense caused by the transfer of merchandise or discontinuance or suspension of the bonded status of the facility.

2. *Agreement with respect to the deposit of merchandise.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal acknowledges that Customs may conduct unannounced inventory checks of the facility and agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Mark each package with the correct general order number, warehouse entry number, or seizure number and the corresponding date of the order, entry, or seizure delivery ticket;

(c) Store separately any package that has an exception for loss or damage or that has a discrepancy between its contents, its marks and numbers or the marks and numbers on the permit; and

(d) Store together in one place within the facility all merchandise in a general order shipment, in a warehouse entry, or in a seizure unless Customs permits commingled storage, or the merchandise is covered by paragraph (c).

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

3. *Agreement to keep records.* If authorized to operate a warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Record the shipping marks and numbers of all packages, (or the weigher's or gauger's numbers of weighable or gaugeable packages that lack shipping marks and numbers) in accordance with Customs Regulations and file a copy of the record pertaining to a specific warehouse entry, general order shipment, or a seizure in a separate permit file folder.

(b) File in that same file folder, and record in accordance with Customs Regulations, within 2 business days after the event occurs, all receipts, damages/shortage reports, manipulation requests, specific removals, and blanket removals and the partial release permit copy for each removal made under the blanket authority, referred to in 19 CFR 19.8.

(c) Maintain that permit file folder in the facility and allow inspection of it by Customs at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded or filed, or not recorded or filed, or each instance

of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry, general order shipment or seizure.

4. *Agreement to secure facility.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Secure the facility by meeting each of the general standards and recommended specifications that are listed in T.D. 72–58; so long as they do not conflict with the provisions of paragraph (b);

(b) Meet every applicable Federal, state, and local requirement (such as fire codes) for the safe and sanitary storage of merchandise in the facility and remove all trash and waste from the bonded area;

(c) Place merchandise in the facility so that no door, entrance, or exit is blocked;

(d) Establish and maintain aisles in the facility so that Customs has ready access to all merchandise at all reasonable hours;

(e) Hold the facility open for Customs inspection at all reasonable hours; and

(f) Secure inlets and outlets of bonded tanks with locks or Customs approved inbond seals.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

5. *Agreement to notify and file documents with Customs.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Before any removal, insure that Customs has given either specific or blanket permission for the removal;

(b) Within 10 business days after a final removal of merchandise covered by a warehouse entry, general order shipment or seizure, file with Customs the complete permit file folder on that merchandise, together with a complete accounting of all merchandise in the entry, shipment, or seizure;

(c) Before any manipulation, notify Customs of the intended manipulation and obtain Customs specific or blanket approval;

(d) Within 45 days from the end of the principal's business year (fiscal or calendar), file the Warehouse Proprietor Submission in the form prescribed by T.D. 82–204—which includes a complete accounting of the beginning and ending inventories of merchandise in each facility during the year and of all receipts, manipulations, and removals during the year;

(e) Notify Customs if any merchandise in an entry or in a general order shipment is not withdrawn during the applicable 5-year warehousing period or the applicable 1-year general order period, on expiration of that period, and file with Customs the permit file folder on that entry or shipment when requested by Customs:

(f) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage, or shortage of, or damage to any merchandise in the facility; and

(g) Notify Customs in writing by close of business of the next business day on discovery of any discrepancy (i.e. overage, shortage, damage, etc.) in merchandise in a general order shipment or seizure.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, obligors agree to pay liquidated damages equal to five times the duty and tax due, as calculated by Customs, on any dutiable or taxable merchandise and liquidated damages equal to the value of any nondutiable merchandise.

6. *Agreement on sealing conveyances.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ————————————————
(Address) ————————————————
(Name) ————————————————
(Address) ————————————————
(Principal) ————————————————
[Seal]
(Name) ————————————————
(Address) ————————————————
(Address) ————————————————
(Surety) ————————————————
[Seal]
(Name) ————————————————
(Address) ————————————————
(Name) ————————————————
(Address) ————————————————
(Surety) ————————————————
[Seal]

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ————————, certify that I am the ———————— secretary of the corporation named as principal in the within bond; that ————————, who signed the said bond on behalf of the principal, was then ———————— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

———————— [corporate seal]

NOTE.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix B.—Proprietor's Manufacturing Warehouse Bond, Class 6

No. ————————

Know all men by these presents that* ———————— of ————, as principal, and* ————, of ————, and ————, of ————, as sureties, are held and firmly bound into the United States of America in the sum of ———— dollars ($————), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ————, 19——.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District No. ——, at the place and for the purpose of manufacturing certain articles specified below, namely:

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

Location (number, street, city, and State)	For the manufacture of (specify articles in detail)

Now therefore, the condition of this obligation is such that—

1. *Agreement to comply with statute and regulations.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Use the warehouse exclusively for the purpose for which it is bonded;

(b) Properly enter and pay duty on any imported implement, machinery, or apparatus that is for the construction of the warehouse or for the prosecution of its business;

(c) Insure that all operations conform strictly to any manufacturing formula filed with Customs;

(d) Maintain within the warehouse a separate storage area, secured in accordance with the standards and specifications in T.D. 72-56, for storage and all imported merchandise, domestic spirits, and other merchandise subject to an Internal Revenue tax transferred to the warehouse for manufacturing; and

(e) Maintain within the warehouse a separate area, secured in accordance with the standards and specifications in T.D. 72-56, for the storage of products manufactured in the warehouse;

(f) Properly enter and pay duty on any article, waste, or byproduct that is withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of $1,000 for each default under subparagraph (a) and/or (c), and $100 for each default under subparagraphs (b), (d), (e) and/or (f).

2. *Agreement to secure against loss.* If principal is authorized to operate a bonded manufacturing warehouse, obligors agree to reimburse the United States for any loss or expense connected with the deposit, storage, manufacturing or removal of merchandise in the warehouse, including duty and tax due and an expense due to the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

3. *Agreement with respect to deposit of merchandise.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Store merchandise received in the manner required by statute or regulation;

(c) Transfer merchandise from a storage area in the warehouse to a manufacturing area in the warehouse in the manner required by regulation;

(d) Mark each package with the correct warehouse entry number and date until manufacturing takes place; and after manufacture, mark each package of the finished product with the correct warehouse entry and date.

If principal defaults, obligors agree to pay liquidated damages which equals $100 and the amount of duty on any merchandise involved in the default.

4. *Agreement to keep records.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Record all deposits of merchandise, for manufacturing or prosecution of warehouse business in accordance with Customs Regulations;

(b) Record all transfers from any storage area to a manufacturing area in the facility in accordance with Customs Regulations;

(c) Record all transfers from any manufacturing area to finished product storage area within the facility in accordance with Customs Regulations;

(d) Record all manufacturing operations performed within the warehouse with sufficient detail to enable a Customs officer to determine whether there has been compliance with any manufacturing formula filed with Customs and to enable a Customs officer to audit use and disposition of the merchandise;

(e) Record all withdrawals and removals from the facility in accordance with Customs Regulations;

383-553 O - 82 - 8

(f) File in a separate folder pertaining to each entry into the facility each document (receipt, permit, transfer permit, manufacturing abstract, and removal permit) on that entry within 2 business days after the event covered by the document occurs;

(g) Maintain each permit file folder in the facility and allow inspection of it by Customs at all reasonable hours; and

(h) Take an annual physical inventory as well as file a warehouse proprietor submission.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded, incorrectly filed, or not recorded or filed, or for each failure to inventory, or each instance of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry.

5. *Agreement on removals.* If principal if authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Not remove or suffer the removal of any merchandise except under a Customs permit;

(b) Within 10 business days after final removal of any merchandise in a warehouse entry, file the complete permit file folder on that entry with Customs;

(c) At the end of each month, file a detailed statement of all imported merchandise and merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles;

(d) Notify Customs upon expiration of the warehouse period if any imported merchandise in an entry is not withdrawn within 5 years from the date of importation and simultaneously file with Customs the permit file folder on that entry;

(e) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage or shortage of or damage to any merchandise in the facility; and

(f) Properly mark each package of cigars that is to be withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, or if it consists of improperly marked packages of cigars, obligors agree to pay liquidated damages equal to five times the duty and tax due on any dutiable and/or taxable merchandise involved in the default and liquidated damages equal to the value of any nondutiable merchandise involved in the default.

6. *Agreement to furnish proof of exportation.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to furnish any consular invoices, declarations of owners or consignees, certificates of orgin, certificates of exportation or other document that may be demanded by Customs to show compliance with the law and regulations within 6 months from the date of demand.

If principal defaults, obligors agree to pay liquidated damages equal to the duty or tax on any merchandise involved in the default.

7. If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

8. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1311 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ———————————————————————

(Address) ———————————————————————

(Name) ————————————————————
(Address) ————————————————————
(Principal) ————————————————————
(Seal)
(Name) ————————————————————
(Address) ————————————————————
(Name) ————————————————————
(Address) ————————————————————
(Surety) ————————————————————
(Seal)
(Name) ————————————————————
(Address) ————————————————————
(Name) ————————————————————
(Address) ————————————————————
(Surety) ————————————————————
(Seal)

* If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ————————. certify that I am the ———————— secretary of the corporation named as principal in the within bond, that ————————, who signed the said bond on behalf of the principal, was then ———————— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

———————— [corporate seal]

NOTE.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix C.—General Bond for Smelting and Refining Warehouses

No. ————————

Know all men by these presents, that* ————————, of ————, as principal, and ———— of ————, and ————, of ———— as sureties, are held and firmly bound unto the United States of America in the sum of ———— dollars ($————), for the payment of which we bind ourselves, our heirs, executors, adminstrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this ———— day of ————, 19——.

Whereas, the said ———————————— have (has) been authorized to smelt or refine, or both, imported metal-bearing materials in bond without the payment of duty thereon as provided in section 312 Tariff Act of 1930, as amended, in the premises situated at ————————, and more particularly described by metes and bounds in exhibits ————, attached hereto and made a part hereof, which premises are owned, controlled, and operated by ————; and

Whereas, metal-bearing materials will be entered for warehouse to be smelted or refined, or both; and

Whereas, metal-bearing materials (as well as merchandise generally) will be entered for consumption or for warehouse, and in warehouses of classes 2, 3, or 4 at any of the following ports of entry ————————————: and

————————————

Whereas, certain merchandise in whole or in part, may be entered under the provisions of section 484, Tariff Act of 1930, as amended, and duties deposited under the provisions of section 505(a), Tariff Act of 1930, as amended; and

————————

* May be executed by the secretary, assistant secretary, or other officer of the corporation.

Whereas, pursuant to the regulations promulgated under section 448(b), Tariff Act of 1930, the said principal may find that immediate delivery of the merchandise will be necessary and desires the release of such merchandise prior to the making of formal entry therefor and payment of duties thereon; and

Whereas, imported merchandise generally, and dutiable metal-bearing materials (including products party smelted or refined) will, to the extent permitted by law and regulations and in accordance therewith be transferred from one warehouse to another, or be withdrawn for consumption, for transportation and rewarehousing, for exportation, for transportation and exportation, or for any other purpose provided for by law and regulations, as shown in the required documents.

Whereas, the above-bounden principal may request that the merchandise be examined elsewhere than at the public store, wharf, or other place in charge of a Customs officer;

Now, therefore, the condition of this obligation is such, that—

1. *Agreement to pay costs and expenses.* If principal is allowed to operate a bonded smelting and refining warehouse and enters any metal-bearing material without payment of duty, obligors agree to pay any costs or expense associated with Customs supervision of the warehouse and indemnify Customs for any loss associated with the entry, deposit, storage, smelting, refining, withdrawal, transfer, or removal of any metal-bearing material or any product of a metal-bearing material in or from the warehouse, including any expense caused by the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

2. *Agreement on recordkeeping.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Maintain complete smelting and refining records in accordance with Customs Regulations showing the receipt and disposition of each shipment of materials (hereinafter includes metal-bearing materials, products of metal-bearing materials, and dutiable metal) received (actual and theoretical), into the warehouse;

(b) File with the Regional Director, Regulatory Audit Division, for the district in which the plant is located, at end of the principal's business year, a complete statement of the annual smelting and refining operations done which shows:

(i) The quantity of metal-bearing materials in the warehouse and their dutiable metal content at the beginning of the year;

(ii) The quantity of metal-bearing materials received during the year and their dutiable metal content;

(iii) The quantity of metal-bearing materials in the warehouse at the end of the year and their dutiable metal content;

(iv) The quantity of metal-bearing materials worked during the year which shall include the quantity of foreign material and the quantity of domestic material put in process;

(v) The quantity and kind of metal and intermediate products produced;

(vi) Disposition of all materials transferred, withdrawn, or removed (actually or theoretically) from the warehouse during the year;

(c) Maintain the report of sampling, weighing, and assaying on each shipment of metal-bearing materials received into the warehouse for five years from the date of liquidation;

(d) Maintain for five years from date of liquidation any report of sampling, weighing, and assaying on any smelting and unrefined product or bullion obtained from the smelting of imported material that is to be transferred to another warehouse in a separate permit file folder and file the completed folder on that entry with Customs within 10 business days after final removal of merchandise on that entry;

(e) Maintain all Customs permits (blanket or specific) to enter, transfer, withdraw, or remove (actual or theoretical) any materials into or from the warehouse;

(f) Complete and file with Customs within 30 days after exportation of metal under the memorandum withdrawal procedure set forth in 19 U.S.C. 1312(b)(1) and the Customs Regulations all records on the exportation;

(g) File with Customs a complete monthly inventory of all metals in the warehouse as required by the Customs Regulations; and

(h) Notify Customs upon expiration of the warehouse period if any imported merchandise on an entry is not withdrawn within 5 years from the date of importation and simultaneously with notification file with Customs the permit file folder on that entry.

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

3. *Agreement on entry and withdrawals.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Receive actual or theoretical deposit of any metal-bearing material, a product of a metal-bearing material, or any metal, which may be subject to duty, only after receipt of a Customs permit;

(b) Keep separate any metal-bearing material which may be subject to duty from all other materials until that material has been sampled, weighed, and assayed; and

(c) Obtain Customs permit to transfer, withdraw, or remove (physically or theoretically) any material before transfer, withdrawal, or removal is begun.

If principal defaults, obligors agree to pay liquidated damages equal to the amount of duty on all materials involved in the default.

4. *Agreement to pay duty.* If principal operates a bonded smelting and refining warehouse, obligors agree to pay on demand all duty determined to be due on liquidation or by regulation with respect to any material withdrawn for consumption and any dutiable metal found to be missing from the warehouse without a proper withdrawal or removal.

5. *Agreement to secure facility.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Secure the warehouse by meeting each of the general standards and recommended specifications that are listed in T.D. 72–56; so long as they do not conflict with those provisions of paragraph 5(b);

(b) Meet every applicable Federal, state, and local requirement (such as fire codes) for the safe, sanitary, and secure storage of materials in the warehouse;

(c) Place materials in the warehouse so that no door, entrance, or exit is blocked;

(d) Establish and maintain the warehouse so that Customs has ready access to all materials at all reasonable hours; and

(e) Hold the warehouse and all records open for Customs inspection at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

6. If principal operates a bonded smelting and refining warehouse, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1312, and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ————————————————————
(Address) ————————————————————
(Name) ————————————————————
(Address) ————————————————————
(Principal) ————————————————————
[Seal]
(Name) ————————————————————

(Address) ————————————————————
(Name) ————————————————————
(Address) ————————————————————
(Surety)————————————————————
[Seal]
(Name) ————————————————————
(Address) ————————————————————
(Name) ————————————————————
(Address) ————————————————————
(Surety) ————————————————————
[Seal]

*If the principal or surety is a corporation the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ————————, certify that I am the ———————— secretary of the corporation named as principal in the within bond; that ————————, who signed the said bond on behalf of the principal, was then ———————— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed sealed, and attested for in behalf of said corporation by authority of its governing body.

———————— [corporate seal]

NOTE.—To be used when no power of attorney has been filed with the district director of Customs.

APPENDIX D

U.S. Customs Service, Bonded Warehouse Proprietor, Submission Instructions

The preparation and filing of this submission, with the Regional Director, Regulatory Audit Division, U.S. Customs Service, is to occur within 45 days subsequent to the company's year end. Should you have questions regarding this submission, contact the Regional Director, Regulatory Audit Division.

A warehouse proprietor is required to file a submission for each warehouse facility. The definition of a warehouse facility is as follows: A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses, the two would be considered as one warehouse facility and the three warehouses would each be considered as separate facilities.

The following instructions are to assist you in preparing the "Bonded Warehouse Proprietor Submission."

On the front page of each warehouse submission record the information requested as shown below.

Name of warehouse facility ————————
Address ————————
Telephone number ————
IRS number ————
Contact person ————————

The Warehouse Proprietor Submission form is set forth below. The form is divided into eight sections labeled A through H.

In:

Column (A). Record the number and date of all entries which were included in:
1. The beginning inventory of the year just ended.

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

2. The ending inventory, based on the physical inventory just taken.

3. Also, include all entries which were opened and closed during the year which do not appear in either the beginning or ending inventory listings.

Column (B). Provide an adequate description of all merchandise covered by those entries listed in column (A). The description should be specific enough to identify the commodity, e.g. "scotch" rather than "liquor." For entries listing multiple commodities, the term "various" may be used, however this will not be acceptable for all situations.

Column (C). Record in column (C) the quantity stated on the entry for each commodity described in column (B).

Column (D). Record any quantity actually received that is over/short that recorded in column (C).

Columns (E) and (F). Record the quantities relating to all breakage occurring upon arrival and/or in the warehouse pertaining to each commodity listed in column (B).

Column (G). Record the quantity of merchandise that is on hand at the end of the business year.

Column (H). Record the date on which the entry was closed and forwarded to Customs.

An authorized representative of the company must sign the document where indicated prior to presenting it to Customs.

WAREHOUSE PROPRIETOR SUBMISSION

Entry and date	Description of merchandise	Quantity		Breakage		Ending inventory quantity	Date entry closed and forwarded to customs
		Per entry	Over/short on receipt	Upon receipt quantity	In warehouse quantity		
(A).....	(B).....	(C).....	(D).....	(E).....	(F).....	(G).....	(H)

CERTIFICATION: I hereby certify that the information contained in this submission completely and accurately represents all entry transactions as well as beginning and ending inventories of (name) ———————— warehouse facility for the year ending ———.

(Signed) ————————————

(Title) ————————————

(Company) ————————————

(Date) ————————————

APPENDIX E.—FINAL REGULATORY FLEXIBILITY ANALYSIS ON CUSTOMS REGULATIONS AMENDMENTS RELATING TO BONDED WAREHOUSES

Introduction

The U.S. Customs Service is amending selected portions of the Customs Regulations, relating to the control of merchandise in Customs bonded warehouses. The amendments entail major changes in the method of control of merchandise in such warehouses. The principal changes are the elimination of the physical supervision of warehouse transactions by Customs warehouse officers and the elimination of recordkeeping by Customs warehouse officers that tends to duplicate the recordkeeping of warehouse proprietors. The

new warehouse control system will make use of periodic audits and spot checks of warehouse inventories. Warehouse proprietors will incur certain additional responsibilities and will be accountable for the proper management of their operations.

The amendments will have an economic impact on Customs bonded warehouses as well as on the U.S. Treasury. The Regulatory Flexibility Act requires that "regulatory flexibility" analyses be prepared on proposed regulations unless the regulations will not have a "significant economic impact on a substantial number of small entities." Since many Customs bonded warehouses could be considered to be "small entities," and since the proposed warehouse amendments were likely to have a "significant economic impact" on those small entities, an *initial* regulatory analysis was prepared by the Customs Service and was published in the Federal Register on March 4, 1982, along with the Notice of Proposed Rulemaking on Customs bonded warehouses. The initial regulatory flexibility analysis and the Notice generated over 50 public comments on the proposed amendments. These public comments have been taken into consideration during the preparation of the final rule on this project. The *final* regulatory flexibility analysis (as required by the Regulatory Flexibility Act) on the bonded warehouse amendments appears below; this analysis also fulfills any regulatory analysis requirements under Executive Order 12291.

Statement of the Problem and Rationale for Customs Action

The current bonded warehouse control system utilized by the Customs Service often necessitates the physical presence of a Customs warehouse officer. This is deemed by the Customs Service to be an outdated system, and is therefore being changed. Indeed, in 1974 a General Accounting Office report stated that: "We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses.

The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present." (emphases added).

In order to help establish a viable alternative to the current Customs bonded warehouse control system, the Customs Service carried out a successful pilot test at two selected bonded warehouses between October 1979 and April 1980. The test utilized a reporting system with post audit application, i.e., recordkeeping and other functions were carried out by warehouse proprietors without the constant physical presence of a warehouse officer, but with follow-up audit by the Customs Service. This new control method was

deemed by the Customs Service to be both cost-efficient and mission-effective. Accordingly, a Program Development Model was prepared which described the benefits of the new control method and compared it with a number of alternative methods. Customs management decided to pursue the complete modification of the current system into a system that uses spot checks and post audit techniques rather than the physical presence of Customs warehouse officers. Accordingly, subsequent to the receipt and study of public comments on the proposed new control system, the Customs Service is now announcing the final rule which implements the new system.

The Number of Warehouses and "Small Entities" Affected

A Customs bonded warehouse is a building or other secured area in which merchandise may be stored, manipulated, or undergo manufacturing operations without payment of duty. A recent Customs Service survey indicated that there were 1,538 Customs bonded warehouses in the United States as of March 1982. These warehouses are divided into eight "classes," according to the type of storage, manipulation, manufacturing, or smelting that takes place in each warehouse. The two predominant types of bonded warehouses are (1) warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof, and (2) public bonded warehouses used exclusively for the storage of merchandise not belonging or consigned to the proprietor. Of the 1,538 warehouses, many (i.e., those with relatively few transactions) can be considered to be "small" warehouses. However, not all such warehouses would be "small entities" under the Regulatory Flexibility Act because they may be owned by large corporations or are only a small segment of a larger warehouse (or other) operation. The number of warehouses by Customs region is shown below:

Region I (Boston)	373
Region II (New York)	96
Region III (Miami)	303
Region IV (New Orleans)	79
Region V (Houston)	193
Region VI (Los Angeles)	260
Region VII (Chicago)	234
Total	1,538

In fiscal year 1981, $489.6 million in duties were collected from bonded warehouse withdrawals.

The Current System and Current Costs

The Customs Service is responsible for controlling bonded warehouses. Currently, Customs' control is generally carried out via

383-553 O - 82 - 9

Customs warehouse officers who supervise the entry or withdrawal of goods from the warehouse and oversee the manipulation, manufacture, or destruction of such goods. Warehouse proprietors are required to reimburse the Customs Service for the salaries and certain other costs of full-time Customs warehouse officers and temporarily detailed officers. In March 1982 there were 265 full-time reimbursable Customs warehouse officers (as late as September 1980, there were 390 authorized positions for Customs warehouse officers, of which 361 were filled).

In many, if not most, warehouses, activity is sporadic and Customs warehouse officers are called upon to perform their tasks on an as-needed basis. The Customs Service must not only provide Customs warehouse officers and other officers to control the warehouses, but must also allocate the time of various Customs personnel (clerks, aids, supervisors, etc.) to maintain, file, and process the entry and withdrawal documentation at the customhouse. In March 1982 there were 111 such full-time (and nonreimbursable) individuals, a slight decrease from the 119 individuals of September 1980.

The annual direct cost of the current Customs warehouse control system is $8.39 million. The current cost would be well above $8.39 million if the number of Customs warehouse officers had not already diminished from 361 in September 1980 to 265 at present (an October 1980 Customs Headquarters study calculated the cost of the program at $10 million per year). The current cost of $8.39 million is divided as follows:

(1) A $4.43 million cost to warehouse proprietors to reimburse Customs for the 265 full-time officers;

(2) An estimated $1.2 million cost to warehouse proprietors to reimburse Customs for part-time officers assigned;

(3) An estimated $1.1 million cost to warehouse proprietors to reimburse Customs for overtime charges; and

(4) A $1.66 million cost to the Customs Service to pay for the 111 nonreimburseable Customs employees who are engaged in warehouse—related tasks.

Accordingly, warehouse proprietors are currently paying $6.73 million (i.e. $4.43 million plus $1.2 million plus $1.1 million, as shown above) in reimbursable fees to the Customs Service. This results in an average cost per warehouse of nearly $4,400. However, the actual reimbursable cost per each given warehouse fluctuates greatly, depending upon whether the warehouse is large (e.g. has a large volume of transactions), or is small (e.g., has a limited number of transactions). Many warehouses are believed to currently pay the Customs Service less than $500 per year in reimbursable expenses, while some (large volume) warehouses incur expenses of thousands or even tens of thousands of dollars.

There is also an *indirect* cost to warehouse proprietors under the current system: the delays, lost sales, and other costs incurred

when Customs is unable to provide prompt and around-the-clock supervision of warehouse transactions.

With regard to the general U.S. economy, the current bonded warehouse program is beneficial, and especially beneficial to the importing community. For example, bonded warehouses allow importers to defer the payment of duties on a substantial amount of merchandise. However, Customs Service management believes that equivalent benefits can be realized at a lower cost if the current bonded warehouse control system is comprehensively changed.

The "New" Bonded Warehouse Control System and Estimated Costs

The Customs Service, via the attached "final rule," is hereby instituting a new system of supervising merchandise in bonded warehouses. This new system entails a complete revision in the type and scope of Customs' physical supervision of bonded warehouse operations. Among the changes which will occur are:

(1) The elimination of Customs warehouse officer positions at bonded warehouses;

(2) The elimination of the 111 nonreimbursable warehouse related positions;

(3) The increased accountability of warehouse proprietors for the proper management of their warehouse operations; new responsibilities would include certain recordkeeping requirements, including the preparation of an annual "Proprietor's Submission" at the end of each warehouse's fiscal year;

(4) A higher fee to establish ($820), and new fees to alter ($356) or relocate ($356) a warehouse facility (the fee to *establish* a warehouse would have been raised even under the *current* bonded warehouse control system);

(5) The establishment of an annual fee of $650 in the first year on warehouses to cover the cost of Customs spot checks and regulatory audits; and

(6) Perhaps the securing of modified bond coverage for a number of warehouses.

Under the new system, proprietors will be held accountable for recordkeeping functions similar to those currently being carried out by Customs warehouse officers. However, recordkeeping requirements for most warehouses will probably not impose substantial burdens on proprietors since proprietors *already* keep substantive records of transactions (it should be noted that such records are needed for billing purposes and tax purposes).

Nevertheless, a few (generally large) warehouses, especially in Customs Region II (New York), have indicated that the new recordkeeping requirements and Proprietor's Submission will contribute to *increased* costs for their operations. A number of proprietors have claimed that it will be necessary for each of them to hire a new employee to prepare the Proprietor's Submission and carry out related recordkeeping. The annual cost of this employee would

range from $15,000 (low estimate) to up to $25,000 (high estimate), according to estimates provided to the Customs Service.

Other alleged costs would be for possible reprograming and computer expenses, possible increased security costs, and a cost in preparing any physical inventory which may be necessary for warehouses during the conversion period.

Certain large warehouses may indeed incur the "additional" expense of hiring a bookkeeper/clerk to prepare the Proprietor's Submission, especially since the Proprietor's Submission may necessitate a different recordkeeping format from that already kept by the warehouse proprietor. However, it is likely that such personnel will be hired at a cost which is *lower* than the currently reimbursable cost of the Customs warehouse officer who is assigned to the particular warehouse. Accordingly, while some large warehouses will incur certain new costs relating to the Proprietor's Submission, these costs are likely to be less than the savings which such warehouses will reap under the new control system. The cost effect of the Proprietor's Submission on small warehouses is not expected to be substantial, due to the relatively few number of transactions handled in most small warehouses. The Customs Service's original calculation of the total amount of time which will be spent by the warehouse community to prepare the Proprietor's Submission has now been revised substantially downward due to new information and a better understanding of the effect on warehouses. The aggregate cost of the Proprietor's Submission and related recordkeeping will be approximately $1.8 million.

The annual cost of the new system on existing warehouses is estimated to be less than $3.4 million, i.e., significantly less than the cost of the current system. The estimated cost is based upon the following components:

(1) A cost for recordkeeping and the preparation of the annual Proprietor's Submission of $1.8 million (there may also be a "one-time" cost of a complete inventory/reconciliation which would be taken before the new system is implemented). In addition, warehouses will experience the occasional cost of interruptions due to Customs audits and spot checks;

(2) A cost (as estimated by the initiating office) of $1.0 million during the first year for Customs regulatory audit and inspector services; the estimated $1.0 million for these services respresents the aggregate "annual fee;" and

(3) Possible increased costs of bonding coverage and certain fees for the establishment, alteration, or location of warehouse facilities—these costs are believed to be less significant than the amounts specified in (1) and (2) above.

The aggregate cost of the new warehouse control system on bonded warehouses is expected to be less than under the current system, although there are likely to be absolute increased costs (mainly as a result of the annual fee) on a number of small ware-

houses. The aggregated cost to warehouse proprietors under the new system is estimated at less than $3.4 million per year, compared to $6.73 million under the current system, for a savings of at least $3.33 million per year.

The economic impact of the new system on the U.S. Treasury (U.S. taxpayer) will also be beneficial. The Customs Service would save up to $1.66 million per year in indirect warehouse control costs which are currently being incurred to support 111 nonreimbursable warehouse-related positions, although there will be a (minimal) new expense involved in collecting, processing, and analyzing information on the proprietor's submission. The new system will also result in the elimination of many customs warehouse officer positions from the customs employment ceiling. Customs management also believes that the new system will not have any adverse effects on enforcement or the collection of revenue.

Consideration of Public Comments

The Regulatory Flexibility Act requires that regulatory flexibility analyses contain a summary of the issues raised by public comments, a summary of the agency assessment of such issues, and a statement of any changes made pursuant to the comments.

The Federal Register notice on bonded warehouses of March 4, 1982, requested public comments on the notice of proposed rulemaking as well as on the initial regulatory flexibility analysis. Fifty comments were received; 27 of these generally supported the proposed amendments and 19 were opposed.

The remaining commenters did not take a firm position but rather made general comments and observations about the proposed amendments. A few comments delineating alleged adverse economic consequences were received after the comment deadline. Many of the public comments dealt with procedural matters of relevance to only individual warehouses or commenters; the Customs Service's responses to such matters are fully explained in the accompanying notice of final rulemaking. However, a number of major issues, including economic issues, were raised repeatedly throughout the comments. The principal such issues raised were:

(1) Concern with the proposed proprietor's submission and perceived related reprograming expenses;

(2) Concern with the proposed annual fee on bonded warehouses; and

(3) Requests for more study and deliberation prior to the final modification of the current bonded warehouse control system.

The proprietor's submission.—Many commenters expressed concern over the proposed proprietor's submission and other perceived reporting requirements. Some commenters argued that the preparation of the proprietor's submission would entail significant increased costs and considerable reprograming. It was pointed out that the customs data requirements (presently kept by the customs

warehouse officers) are different from the proprietors' records and that warehouses would have to hire additional personnel to satisfy customs' data requirements. One commenter recommended that reporting requirements should be "in a manner ordinarily recorded in the industry."

The Customs Service has decided to retain the requirement for an annual proprietor's submission, as proposed in the notice of proposed rulemaking. A standard format such as the proprietor's submission will be necessary to effectively compare and control warehouse operations. Moreover, many warehouses are relatively small and will not necessitate significant amounts of time or money to collect appropriate data and prepare the required forms. Some large warehouses may incur the additional expense of hiring an inventory clerk, but this expense is not expected to substantially affect the cost structure or operations of such warehouses, and indeed will probably result in a net *savings* to many warehouses which will no longer be required to reimburse the Customs Service for customs warehouse officers. Accordingly, the proposed proprietor's submission has been left intact.

The Annual Fee.—Approximately ten commenters expressed opposition to the proposed annual fee which will be assessed on warehouses. Some of the commenters expressed the view that simply dividing total Customs audit and inspection costs by the number of warehouses would discriminate against *small* warehouses, i.e. that small warehouses will be required to pay the same annual fee as large warehouses. A few commenters felt that it may be more equitable to bill individual proprietors for the costs of audits and spot checks that occur at their particular warehouses. One commenter argued that the fee-setting should be the subject of a separate Notice of Proposed Rulemaking.

The Customs Service recognizes the concern over the equity of an "averaged" annual fee, and indeed will further evaluate the method of assessing the fees as experience is gained with the new warehouse control system. In the meantime, however, the average fee will be retained. This average fee (which will be $650 in the first year) will be a significant savings for large warehouses that are currently paying $15,000 or more for a Customs warehouse officer. With regard to *small* warehouses, an average fee will entail an increased cost for many of the very small or virtually inoperative warehouses and could result in a few warehouses voluntarily giving up their Customs warehouse status. The Customs Service did attempt to devise a "tiering" system to tailor the fees on small warehouses (to minimize the economic impact), but no effective tiering system was ultimately developed; indeed, no *specific* viable tiering system was provided by the public comments either. However, as previously stated, the Customs Service will continue to evaluate various methods of assessing the fee as experience is gained with the new warehouse control system. Indeed, the entire fee

structure will be reviewed for reasonableness and equity immediately after the first 2 full years of operation under the new system, and will be changed if necessary.

Appropriate Study of the New System.—Approximately 13 commenters recommended that more time be taken to study the new bonded warehouse control system before it is implemented. It was felt that the 60-day period for the submission of public comments was not enough to adequately assess the proposed new system, especially with the many unanswered questions and unknowns that existed. Accordingly, a postponement of the final rule on this project was recommended.

Customs Headquarters has studied the bonded warehouse control conversion for several years. A pilot test of the new system was successfully concluded. Substantial data-gathering and expertise have been devoted to this project, although further study of the situation via (for example) the preparation of questionnaires by selected warehouses would indeed significantly assist in measuring the economic impact on individual warehouses. However, to further delay the implementation of the final rule on this project could, in the view of Customs management, be counterproductive and would result in the continuation of the current Customs warehouse officer costs and other costs for many bonded warehouses.

Alternatives to the Proposed Warehouse Control System

The Regulatory Flexibility Act also requires final regulatory analyses to describe any alternatives which may minimize any significant economic impact on small entities, and which were considered by the agency in the preparation of a new rule. In addition, a statement of the reasons why each of the alternatives was rejected is also required.

The Customs Service investigated various methods of reforming the current warehouse control system. One alternative was a "modified" current system in which various changes to the current system would be implemented in a step-by-step manner; this system was rejected because of Customs management's belief that a relatively *rapid* and *complete* modification of the current system would result in greater cost savings for both the Customs Service and the importing community.

Other alternatives considered were (1) the "roving team" approach, under which the positions and functions of Customs warehouse officers would be eliminated and replaced by the establishment of roving teams which would make unannounced inspections and would carry out inventories, and (2) contracting out to a third party. The roving team approach was not deemed to be a viable cost-effective approach by the Regulatory Audit Division, while the alternative of contracting out to a third party would probably require a change in legislation.

After examination of various alternative warehouse control systems, the Customs Service has now chosen the system discussed in the attached "Final Rule." This "new" system is also deemed to be the most cost-effective by Customs management.

The Customs Service considered implementing the new system gradually (over a 1-year period). However, due to operational considerations, the system will now be implemented immediately, i.e., after appropriate notice is given to warehouse proprietors and the general public via this notice of final rule. In order to insure an orderly transition to the new system and to help minimize any problems or costs for warehouses that may result from the system's immediate implementation, Customs will provide appropriate assistance or information to warehouses. The overall economic effect of the new system's immediate implementation may be beneficial to large warehouses, since such warehouses will soon no longer be subject to the reimbursable fees for Customs warehouse officers.

APPENDIX F.—PROPRIETOR'S WAREHOUSE BOND

By this instrument ———————— as principal, of ————————, and ———————— as surety, of ———————— agree to be bound to the UNITED STATES OF AMERICA in the sum of ———— dollars ($————), the payment of which is jointly and severally binding on us, our heirs, executors, administrators, successors, and assigns.

Whereas, the principal intends to operate as the proprietor of a Customs bonded warehouse under 19 U.S.C. 1311, 1312, or 1555, and by this instrument, the principal and surety intend to secure the principal's performance under those laws and the Customs Regulations.

Whereas, the principal and surety agree to be bound to the same extent as if they executed a bond that contained the conditions set forth in appendixes A, B, or C, to T.D. 82-204, as appropriate.

Therefore, the condition of this obligation is such that—

1. *Agreement of a proprietor of a warehouse for storage and manipulation of merchandise, classes 2, 3, 4, 5, and 8.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal and surety agree to comply with all of the conditions and obligations of the bond set forth in appendix A to T.D. 82-204 with respect to any activity of that warehouse.

2. *Agreement of a proprietor of a Customs bonded manufacturing warehouse, class 6.* If principal is authorized to operate a Customs bonded manufacturing warehouse under 19 U.S.C. 1311, principal and surety agree to comply with all of the conditions set forth in appendix B to T.D. 82-204 with respect to any activity of that warehouse.

3. *Agreement of a proprietor of a Customs bonded smelting and refining warehouse.* If principal is authorized to operate a Customs bonded smelting and refining warehouse under 19 U.S.C. 1312,

principal and surety agree to comply with all conditions and obligations of the bond set forth in appendix C to T.D. 82-204 with respect to any activity of that warehouse.

Then this obligation to be void, otherwise to remain if full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ———————————————————

(Address) ———————————————————

(Name) ———————————————————

(Address) ———————————————————

(Principal) ———————————————————

[Seal]

(Name) ———————————————————

(Address) ———————————————————

(Name) ———————————————————

(Address) ———————————————————

(Surety) ———————————————————

[Seal]

(Name) ———————————————————

(Address) ———————————————————

(Name) ———————————————————

(Address) ———————————————————

(Surety) ———————————————————

[Seal]

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ———————————— certify that I am the ———————————— secretary of the corporation named as principal in the within bond; that ————————————, who signed the said bond on behalf of the principal, was then ———————————— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

———————————— (corporate seal)

NOTE.—To be used when no power of attorney has been filed with the district director of Customs.

(T.D. 82-205)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued March 3, 1982, to August 24, 1982, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

DRA-1-09

Dated: October 25, 1982.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: American SMACO Inc.
Articles: Oil pumps and various pump sub-assemblies
Merchandise: Various imported parts and components for the construction of pumping units
Factory: Louviers, CO
Statement signed: June 10, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, August 12, 1982

(B) Company: Apollo Metals, Inc.
Articles: Brass, copper, nickel and chrome-plated steel sheets; steel sheets; and vinyl steel sheet, all cut to size
Merchandise: Imported steel sheet
Factories: Chicago and Franklin Park, IL; Bethlehem, PA
Statement signed: July 22, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs: Chicago, August 6, 1982

(C) Company: Solar Turbines Inc., a subsidiary of Caterpillar Tractor Co.
Articles: Gas turbine engines, gas turbine powered compressors, generators and pump sets
Merchandise: Imported steel, castings, forgings, weldments, and piece parts
Factory: San Diego, CA
Statement signed: December 8, 1981
Basis of claim: Appearing in
Rate issued by RC of Customs: Los Angeles, July 22, 1982

(D) Company: Ciba-Geigy Corp.
Articles: Chlorobenzilate Technical
Merchandise: Imported Diethyl sulfate
Factory: McIntosh, AL
Statement signed: March 9, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, June 16, 1982

(E) Company: Coastal Chemical Corp.
Articles: Ridomil 2E
Merchandise: Imported metalaxyl technical
Factory: Greenville, NC
Statement signed: June 3, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, August 19, 1982

(F) Company: Euclid Equipment Inc.
Articles: Generator sets, generator control panels, automatic transfer switches, switchboards and complete power installations
Merchandise: Imported diesel engines, generators and switchboard instruments
Factory: Wheatley Heights, NY
Statement signed: June 28, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, July 20, 1982
Revokes: T.D. 54701–C and T.D. 80–111–K

(G) Company: Ford Aerospace and Communications Corp.
Articles: Speed control assemblies and radio-tape/cassette players
Merchandise: Imported electrical, automatically-controlling instruments and apparatus and parts thereof (speed control amplifiers) and automotive tape/cassette sub-assemblies and parts thereof
Factory: Lansdale, PA
Statement signed: June 10, 1982
Basis of claim: Used in
Rate issued by RC of Customs: Baltimore, August 5, 1982

(H) Company: Forte Cashmere Co.
Articles: Scoured, dehaired & card sliver camel hair and cashmere
Merchandise: Imported greasy and scoured camel hair and cashmere and yak noils
Factory: Woonsocket, RI
Statement signed: January 18, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs: Boston, May 18, 1982

(I) Company: Hi Specialty America, Division of Hitachi Metals International, Inc.

Articles: 6AL–4V titanium drawn bars, centerless ground bars, drawn coils, and 6AL–4V titanium drawn on lube coils
Merchandise: Imported partly manufactured 6AL–4V AMS 4967E hot rolled titanium wire rods
Factory: Irwin, PA
Statement signed: May 4, 1982
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs: Baltimore, May 18, 1982

(J) Company: Ingersoll-Rand Co.
Articles: Hacksaw blades
Merchandise: Imported and/or drawback hacksaw blanks
Factory: South Deerfield, MA
Statement signed: April 30, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 12, 1982

(K) Company: Kal Kan
Articles: Canned pet food
Merchandise: Imported Gel-Blend
Factory: Columbus, OH
Statement signed: May 24, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: San Francisco, June 24, 1982

(L) Company: Langston Companies, Inc.
Articles: Cotton sheeting bags, polypropylene bags
Merchandise: Imported cotton sheeting, polypropylene sheeting
Factory: Memphis, TN; Crowley, LA
Statement signed: May 24, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New Orleans, June 14, 1982
Revokes: T.D. 79–268–0

(M) Company: Lear Siegler, Inc., Astronics Div.
Articles: Muzzle velocity radar and geophysical north finding and azimuth reference equipment
Merchandise: Imported X4 frequency multipliers and theodolites and accessories
Factory: Santa Monica, CA
Statement signed: August 9, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: Los Angeles, August 24, 1982

(N) Company: Lister Diesels, Inc.
Articles: Complete gas engines
Merchandise: Imported incomplete gas engines
Factory: Olathe, KS
Statement signed: April 19, 1982

Basis of claim: Used in
Rate issued by RC of Customs: New York, June 16, 1982

(O) Company: Merck & Co., Inc.
Articles: Cuprimine capsules (125 and 250 mg)
Merchandise: Imported penicillamine
Factory: West Point, PA
Statement signed: April 20, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, May 19, 1982

(P) Company: Namasco Inc.
Articles: Slit cold rolled carbon steel
Merchandise: Imported cold rolled carbon steel in coils
Factory: Roseville, MI
Statement signed: June 28, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 19, 1982

(Q) Company: Lowrey, a Division of Norlin Industries
Articles: Electronic organs, traypacks, kitsets, assemblies and sub-assemblies
Merchandise: Imported electronic organ parts, including printed circuit boards, cable harness assemblies, amplifiers, speakers, switches and lever
Factory: Romeoville, IL
Statement signed: January 15, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, July 9, 1982

(R) Company: The Prime Mover Co.
Articles: Skid steer loaders and front-end loaders
Merchandise: Imported engines
Factory: Muscatine, IA; Oakes, ND
Statement signed: July 26, 1982
Basis of claim: Used in
Rate issued by RC of Customs: Chicago, August 12, 1982

(S) Company: Pullman Power Products Corp.
Articles: Fabricated piping assemblies and random cut length pipes
Merchandise: Imported carbon steel chrome alloy steel, and stainless steel pipes, fittings, and flanges
Factory: Williamsport, PA
Statement signed: June 18, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, August 2, 1982
Revokes: T.D. 82-23-U to cover a change in name from Pullman Power Products, Division of the M. W. Kellogg Co.

(T) Company: Quanex Corp., Atlantic Tube Div.
Articles: Cold drawn seamless and welded steel tubing
Merchandise: Imported hot rolled seamless and welded steel tubing
Factory: South Plainfield, NJ
Statement signed: October 3, 1981
Basis of claim: Used in
Rate issued by RC of Customs: New York, March 5, 1982
Revokes: T.D. 71-105-O as amended by T.D. 77-244-X to cover successorship from Leland Tube Co., Inc.

(U) Company: Riley Stoker Corp.
Articles: Boiler tube elements, boiler tube panels, boiler tubes
Merchandise: Imported seamless alloy steel boiler tubes
Factory: Erie, PA
Statement signed: June 14, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, June 30, 1982

(V) Company: TCM America (MBK) Inc.
Articles: Complete forklift trucks
Merchandise: Imported unfinished forklift trucks, masts, forks, and parts
Factory: Bridgeport, NJ
Statement signed: June 14, 1982
Basis of claim: Used in
Rate issued by RC of Customs: New York, August 19, 1982

(W) Company: Telectronics Inc.
Articles: Pace makers, bone growth stimulators, sterilized electrodes
Merchandise: Imported integrated circuits, terminals, ceramic insulators, top covers, insulator bushings, unsterilized electrodes
Factory: Milwaukee, WI
Statement signed: April 2, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: New York, July 2, 1982

(X) Company: Thomaston Mills, Finishing Div.
Articles: Piece goods which have been bleached, dyed, mercerized and finished; bed sheets, spreads and pillowcases
Merchandise: Imported and/or drawback piece goods in the greige
Factory: Thomaston, GA
Statement signed: December 7, 1981
Basis of claim: Used in, less valuable waste
Rate issued by RC of Customs: New York, March 3, 1982
Revokes: T.D. 52584-L as amended by T.D. 52760-G

(Y) Company: The Toro Co.

Articles: Power mowers, lawn trimmers, snow removal equipment and attachments and accessories thereof
Merchandise: Imported electrical components, engines, electric motors and seats
Factories: Willmar and Windom, MN; Hudson and Tomah, WI
Statement signed: June 8, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: Chicago, June 29, 1982

(Z) Company: Wilson Electronics, Inc.
Articles: Radio transceivers
Merchandise: Imported transceiver sub-assemblies
Factory: Las Vegas, NV
Statement signed: May 18, 1982
Basis of claim: Appearing in
Rate issued by RC of Customs: Los Angeles, June 18, 1982

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

(C.S.D. 82-141)

This ruling holds that ceiling fans with light fixtures, in the instant case, do not qualify for classification as entireties. The fans in question are separately classifiable under the provision for fans in item 661.06, TSUS. The light fixtures are separately classifiable under the provision for illuminating articles of base metal in item 653.37, TSUS

Date: April 7, 1982
File: CLA-2 CO:R:CV:G
069736 JCH

Re: Decision on Application for Further Review of Protest No. 27041002430

The above-captioned protest and application for further review were filed against your classification of ceiling fans with light fixtures in entry No. 81-266749 dated March 2, 1981. This merchandise is produced in Taiwan. Our decision follows:

Issue

The merchandise was classified as an entirety under the provision for machines, not specially provided for (n.s.p.f.) in item 678.50, Tariff Schedules of the United States (TSUS). The 1981 column 1 rate of duty required under this provision was 4.7 percent ad valorem. Counsel for the importer contends the fans and light fixtures are properly classifiable as entireties under the provision

for fans in item 661.06, TSUS, thereby making the merchandise eligible for an exemption from duty under the Generalized System of Preferences (GSP). Alternately, it is claimed the merchandise is classifiable and duty-free under the GSP under the provision for electrical articles, n.s.p.f., in item 688.45, TSUS.

This protest also involves the further question of whether the merchandise, in fact, requires dutiability as an entirety, and whether the light fixtures are separately classifiable under the provision for illuminating articles of base metal in item 653.37, TSUS. That provision also provides for an exemption from duty under the GSP.

Facts

The merchandise consists of southern-style ceiling fans with light fixtures that can be attached to their bottoms so that that the fans and the light fixtures can be powered from a single electrical outlet.

Law and Analysis

In a decision dated February 18, 1981, file No. 063889, we held that ceiling fans with light fixtures were dutiable as entireties and that, as such, they were more than fans and more than illuminating articles, and, therefore, classifiable under the provision for machines, n.s.p.f., in item 678.50. Counsel claims that this interpretation is incorrect and that the combination fans and light fixtures as entireties are multipurpose machines contemplated in Headnote 2, Part 4, Schedule 6, TSUS. As such, it is claimed they are classifiable in accordance with their principal purpose, which is used as fans. Counsel alternately claims, in effect, that if the combination is more than a fan, it is also more than a machine, and, therefore, classifiable under the provisions for electrical articles, n.s.p.f., in item 688.45.

However, so-called "basket" provisions such as item 678.50 exist as places where articles can be classified when they are excluded from more specific provisions on the basis of the "more than" or other rules of construction. Further, item 688.45 would not take precedence over item 678.50 by virtue of the rule in Headnote 1(v), Part 5, Schedule 6, TSUS. We further find that our earlier decision correctly distinguished between what constitutes a multipurpose machine and what constitutes an article which is more than a machine. However, we now find that the previous decision can no longer be sustained for other reasons. For example, the combination, as a class or kind of merchandise, must be recognized as predominantly used in households. Therefore, in any case item 678.50 could not prevail over the provision for household articles, n.s.p.f., in item 654.00, TSUS. *Frank P. Dow, Co. v. United States*, 21 CCPA 282, T.D. 46819 (1933). But more importantly, the fan and light combinations should not have been regarded as entireties.

While the law of entireties involves elusive concepts to be applied to the specific facts in each individual case, it may generally be stated that articles which in their condition as imported are not joined together may nevertheless be classified as a single tariff entity if they are sold as a single commercial entity, and the separate identities of the parts are merged into the identity of the combination which has a new use and name separate and apart from the uses and names for the parts when marketed separately. Thus, for example, shirts and shorts marketed as single commercial entities known as cabana sets are recognized as entireties. *Miniature Fashions, Inc. v. United States,* 54 CCPA 11, C.A.D. 894 (1966).

The merchandise in question qualifies in no major respects for classification as entireties. With respect to the most important requirement, viz, sale as single commercial entities, we take notice that major retailers of like items sell fans and light fixtures in separate boxes separately priced, and the nation's leading mail-order houses list ceiling fans and light fixtures to be attached to them under separate catalog numbers with prices also separately listed. While certain fans and light fixtures may have more than others in the amount of complementary design features, a purchaser still buys a fan and a light fixture and nothing more. The resulting ensemble is still no more than one household fixture installed upon another.

In this regard, the fans and light fixtures have no independent combined existence. They are not joined when they are imported, and they cannot be joined until both are in turn joined to the building of which they become fixtures. Their main purpose is merely to allow the fan and the light to be operated from a common electrical outlet. Further, other articles used in the household and elsewhere as fixtures, such as drop-in appliances and cabinets, which are in turn mounted on a common area of wall or floor space, are joined for reasons of space economy similar to the economy considerations in the use of electrical outlets, but they would not be regarded as entireties for that reason alone.

Whether combinations are to be regarded as entireties also must have some reference to the organization of the TSUS itself. If a combination, regardless of all other considerations militating against dutiability as an entirety, is nevertheless specifically named in the TSUS, and the separate parts can only be separately classifiable under basket provisions, dutiability as an entirety would be favored. In the instant matter, the reverse is the situation and dutiability as an entirety, all other considerations being equal, should not be favored. Not of the least importance in resolving classification disputes is determining which side is supported by a "strong competing provision." See, for example, *General Methods Corp. v. United States,* 65 Cust. Ct. 212, 215 (1970), *aff'd* 59 CCPA 109, C.A.D. 1049 (1972).

In this matter, the law of entireties may be better understood by a comparison with the opposite doctrine of constructive segregation. Under that doctrine, articles which are joined in their condition as imported are regarded as separate tariff entities when there is no satisfactory alternative for classification of the combination as a single article, and legislative intent would otherwise be circumvented. *United States v. Altray Company,* 54 CCPA 107, C.A.D. 919 (1967). In our opinion, legislative intent would not be served by regarding the unattached articles in this matter as entireties when there would be a serious question as to their dutiable status as a single tariff entity even if they were joined in their condition as imported.

Holding

Our previous decision of February 18, 1981, file No. 063889, is revoked and will no longer be followed. The fans in question are separately classifiable under the provision for fans in item 661.06. The light fixtures are separately classifiable under the provision for illuminating articles of base metal in item 653.37. The certificate of origin and other evidence supporting entitlement to a GSP exemption from duty submitted for the merchandise as entireties may be used for establishing the separate entitlement of the fan and light fixtures to the exemption, if they are sufficient for this purpose, without requiring the importer to submit further GSP documentation. Assuming, under this decision, that the fan and light fixture are both found to be entitled to a free rate of duty under the GSP, the protest should be allowed in full. If, however, the existing documentation does not support the separate GSP entitlement of either the fan or light fixture, the importer should be afforded the opportunity to supplement the GSP claim before final action on the protest. If it appears the protest cannot be allowed, this matter should be returned to us before final action for a further review of any questions raised concerning GSP entitlement.

A copy of this decision should be attached to the Form 19 Notice of Action.

(C.S.D. 82–142)

This ruling holds that certain royalty payments (distributor or

exclusivity payments) are not a part of the appraised value of the imported merchandise because they bear no relationship to the merchandise under consideration and, therefore, are nondutiable under transaction value

Date: June 17, 1982
File: CLA-2 CO:R:CV:V
542844 LDD

To: District Director of Customs, Detroit, Michigan 48226.
From: Director, Classification and Value Division.
Subject: Request for Internal Advice No. 83/82 Exclusive Right to Manufacture and Distribute Domestically Produced Building Products.

This is in response to your letter of May 7, 1982, in which you request Internal Advice (IA 83/82) concerning whether certain "distributor" or "exclusivity" payments form part of transaction value under section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA).

You state that the (Corporation name) (importer) and the foreign shipper, (Corporation name) (exporter) entered into a license agreement on January 1, 1977. The license agreement grants importer the exclusive right to manufacture and distribute the exporter's products in North America. This includes the use of the exporter trademark and technical data developed by exporter, associated with the manufacture and distribution of these building components.

In consideration for such exclusivity rights, the importer agreed to pay a multi-year, multiple factor, royalty payment package to exporter in West Germany. The ultimate annual royalty payment to exporter is determined by a percentage arrangement based on the importer's domestic business within the United States. No royalties are to be paid to exporter on products purchased from exporter (imported merchandise).

The only provision of section 402(b) which could possibly be construed as requiring the inclusion of this fee in transaction value is section 402(b)(1)(D), which provides for the addition to transaction value of:

> "* * * any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States * * *"

You believe that these royalty payments are not a part of the appraised value because they bear no relationship to the merchandise under consideration and that payment of the fee is not required as a condition of sale of the imported merchandise. In support of this position, you cite us to several former Headquarters' rulings. (TAA #29, 6-10-81, 542159 BG, 10-28-80, and 542338 BS, 5-4-81.)

We agree with your conclusion. Our examination of the facts and prior rulings reveals that these royalty payments are indeed nondutiable under transaction value. It is clear from the facts involved here that the importer is not required to pay these royalty fees "as a condition of the sale of the imported merchandise." The importer would be able to purchase this merchandise from exporter regardless of whether the royalty fee was paid. In addition, the royalty agreement specifically excludes the value of imported merchandise from the royalty computation formula. The payments are computed on a basis of the volume of business conducted in the United States. Thus, the royalty fees in question are not so inextricably intertwined with the imported merchandise as to be considered part of the purchase price, and, accordingly, are not dutiable.

(C.S.D. 82-143)

This ruling holds that Certificates of Manufacture and Delivery covering articles produced by subcontractors upon which drawback will be claimed by the principal/claimant may not be required

Date: July 7, 1982
File: DRA-1-CO:R:CD:D
214507 B

Issue

Must a principal and agent operating under either Treasury Decision (T.D.) 55027(2) or 55027(1) when delivering merchandise or finished goods one to the other prepare Certificates of Delivery (Customs Form 7543) or Certificates of Manufacture and Delivery (Customs Form 7575-A)?

Facts

Corporation "A" imports titanium sponge. Not having the facilities to process the sponge into ingots, "A" ships the sponge to corporation "B", which under either of the above-noted T.D.'s processes the sponge for "A." The ingots are returned to "A" for further processing, title to the sponge and finished ingots remaining with that corporation. "A's" broker asks whether "A" must furnish Certificates of Delivery to "B," and whether the latter must furnish Certificates of Manufacture and Delivery to "A."

Law and Analysis

The purpose of the named certificates is to maintain the identity of merchandise or finished articles as required by the drawback law and regulations.

A manufacturer operating two or more factories under the drawback law and regulations is not required to issue Certificates of De-

livery and/or Manufacture when merchandise or finished articles are transferred from one of these factories to another. Should a drawback claimant employ an agent under either noted T.D., use of the merchandise by the agent is considered use by the claimant/principal. Although the factory of the agent is technically not that of the principal, the close connection brought about by the principal/agent relationship and the impact of T.D.'s 55027(2) and 55027(1) make the issuance of the certificates unnecessary.

Holding

Upon written request by drawback claimants who are principals operating under either T.D. 55027(2) or 55027(1), Regional Commissioners may waive the issuance of Certificates of Delivery from the principal to the agent and the issuance of Certificates of Manufacture and Delivery from the agent to the principal.

(C.S.D. 82-144)

Vessels: This decision holds that transportation of fish from a catching vessel by a U.S.-Flag, foreign-built fish processing vessel on the high seas to a United States port is not an employment in the fisheries for purposes of 46 U.S.C. 65k(b)

Date: July 12, 1982.
File: VES-7-01/VES-7-02
CO:R:CD:C 105572 PH

This ruling concerns the use of a United States-flag, foreign-built fish processing vessel for fish processing activities, and for the transportation of the processed fish and supplies for processing the fish.

Issues

1. Is the transportation of live or processed crab to a United States or Japanese port considered an employment in the fisheries, for purposes of the provision formerly in 46 U.S.C. 251(a) (now 46 U.S.C. 65k(b)) that only properly documented vessels shall be deemed vessels of the United States entitled to engage in the fisheries?

2. May fish processing supplies be transported between United States ports in a United States-flag, foreign-built fish processing vessel?

3. Is a vessel conducting fish processing activities of any kind within the 200 mile fishery conservation zone considered to be engaging in the "American fisheries?"

4. What activities does the Customs Service consider to be included within its definition of "American fisheries?"

Facts

The inquirer represents a group of United States citizens who wish to acquire a Japanese-built vessel to be used in the processing of fish, crab, and shrimp. The vessel is to be documented in the United States.

Law and Analysis

Under 46 U.S.C. 883, no merchandise shall be transported between points in the United States, including its districts, territories, and possessions, embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of this provision. The territorial waters of the United States do not extend beyond the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline (Treasury Decision 78–440).

Under the second sentence of 46 U.S.C. 251(a), no foreign-flag vessel shall land in a port of the United States its catch of fish taken on board the vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board the vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. Section 113(b) of the Vessel Documentation Act of 1980 (46 U.S.C. 65k(b)) provides that "[s]ubject to the laws of the United States regulating the fisheries, only a vessel for which a fishery license or an appropriately endorsed register is issued may be employed in that trade." This provision, for purposes of the proposed operation, is substantively the same as its predecessor in the first sentence of 46 U.S.C. 251(a). An exception to this provision is provided by Treasury Decision 56382(6), under which a foreign-built vessel under 5 net tons owned by United States citizens or by resident aliens may engage in the American fisheries. Section 102(2) of the Vessel Documentation Act of 1980 (46 U.S.C. 65(2)) defines "fisheries" to include ". . . the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation at any place within the fishery conservation zone established by section 1811 of Title 16." The definition in this statute is substantively identical to its predecessor in the third sentence of 46 U.S.C. 251(a). The fishery conservation zone (FCZ) established by 16 U.S.C. 1811 is the zone between 3 miles and 200 miles from the baseline from which the territorial sea of the United States is measured. Of course, the engagement in the activities listed in the definition of

"fisheries" in 46 U.S.C. 65(2) within United States territorial waters also is considered an engagement in the fisheries.

Section 4.96(a)(4), Customs Regulations (19 CFR 4.96(a)(4)), would include within the term "fishing," as used in that section, " * * * the transportation of any of those marine products [named in the definition of fisheries in 46 U.S.C. 65(2)] to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer." Paragraph (c) of section 4.96 provides that "[a] vessel of the United States to be employed in *fishing* may be enrolled and licensed, or licensed, depending on its size, or registered. If registered, the vessel must be entitled to be licensed or enrolled and licensed for the fisheries." (Emphasis added.)

Thus, on its face, section 4.96, Customs Regulations, appears to proscribe the transportation from a catching vessel to the United States by a vessel which is not enrolled and licensed, licensed, or registered and entitled to be licensed or enrolled and licensed for the fisheries, *if* the vessel is under the complete control and management of a common owner or bareboat charterer (of the catching vessel). However, this provision of section 4.96 was intended to be permissive, so that a vessel with a license for the mackerel fishery could transport to a United States port its catch, or fish from another taking vessel, if the vessels were under common ownership, control, and management, without violating its license. To rule that United States-flag, foreign-built vessels *not* under common ownership, control, and management with the fish taking vessels *could* transport fish from the fish taking vessels on the high seas to a United States port, but that such vessels under common ownership, control, and management with the fish taking vessel *could not* engage in such transportation would be incongruous. We are unaware of the Customs Service having ever so ruled. Furthermore, since the promulgation of section 4.96 in its present form, Congress has enacted amendments to 46 U.S.C. 251(a) to provide a comprehensive scheme under which: (1) only properly documented vessels of the United States and foreign-flag vessels which have on board a valid permit issued under the Fishery Conservation and Management Act of 1975, as amended (FCMA) may fish in the FCZ (46 U.S.C. 251(a), as amended by Public law 96–61, section 2, 93 Stat. 407 (1979), and the Vessel Documentation Act of 1980, discussed above; and 16 U.S.C. 1824) and; (2) only United States-flag vessels, whether foreign- or United States-built, may land in a port of the United States fish or fish products they have caught on the high seas or taken from another vessel on the high seas engaged in fishing or fish processing operations.

Accordingly, in answer to the inquirer's first question, the transportation of live or processed crab to a United States or Japanese port from a catching vessel on the high seas would not be deemed to be an engagement in the "fisheries," for purposes of the provi-

sion in 46 U.S.C. 65k(b) reserving the United States fisheries to properly documented vessels, and foreign-flag vessels with a valid permit issued under the FCMA. Of course, transportation of the crab from a catching vessel in United States territorial waters to a United States port by the vessel under consideration would violate the coastwise laws.

The Customs Service has ruled that supplies, consisting of packing boxes, salt, and plastic film sheets or bags used in fish processing operations by a fish processing vessel, are merchandise for purposes of the coastwise laws. Therefore, in answer to the inquirer's second question, the transportation between coastwise points, or any part of such transportation, of such supplies on the non-coastwise-qualified vessel under consideration would be prohibited.

In answer to the inquirer's third question, a vessel used solely in fish processing activities in the United States FCZ is not considered to be engaged in the "fisheries," as that term is defined in 46 U.S.C. 65(2), or in "fishing," as that term is defined in section 4.96(a)(4), Customs Regulations. We assume that the inquirer is aware that fish processing is considered "fishing" for purposes of the FCMA (see 16 U.S.C. 1802(10) and 1802(11)).

In answer to the inquirer's fourth question, as indicated above, for purposes of the provision in 46 U.S.C. 65k(b) that only properly documented vessels shall be deemed vessels of the United States entitled to engage in the fisheries, the activities included in "fisheries" include "* * * the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation at any place within the fishery conservation zone established by section 1811 of Title 16" or within United States territorial waters.

Under item 180.00, Tariff Schedules of the United States (TSUS), products of American fisheries (including fish, shellfish, and other marine animals), which have not been landed in a foreign country, or which, if so landed, have been landed solely for transshipment without change in condition, are not subject to any duty. An American fishery, for purposes of item 180.00 TSUS, is defined in headnote 1, Schedule 1, Part 15, Subpart A, TSUS, as "* * * a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right, by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof." We have ruled that fish or fish products caught by United States fishing vessels in the FCZ, purchased by a United States-flag, foreign-built processing vessel in the FCZ, and there processed and delivered to United States ports are products of an American fishery and free of tariff or duty.

This inquiry may raise questions pertaining to the FCMA, documentation of vessels, and dutiability of fish and fish products not

addressed in this ruling. The inquirer is informed in the letter transmitting this ruling of the addresses to which he may send questions on these subjects.

Holdings

1. The transportation, of live or processed crab to a United States or Japanese port from the catching vessel on the high seas is not considered to be an employment in the fisheries, for purposes of 46 U.S.C. 65k(b) (the successor to the first sentence of 46 U.S.C. 251(a)), and would not be prohibited if by the United States-flag, foreign-built processing vessel under consideration.

2. The transportation, or any part thereof, of fish processing supplies between United States ports in a United States-flag, foreign-built fish processing vessel violates the coastwise laws.

3. The use of a vessel solely for any kind of fish processing activities within the 200 mile fishery conservation zone is not considered an employment in the fisheries, for purposes of 46 U.S.C. 65k(b) (see ruling number 1, above).

4. For purposes of 46 U.S.C. 65k(b) (see ruling number 1, above), the Customs Service considers "* * * the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation at any place within the fishery conservation zone established by section 1811 of Title 16" or within United States territorial waters to be within its definition of fisheries.

Effect on Other Rulings

None.

(C.S.D. 82-145)

Vessels: This decision holds that frozen, containerized fish may be transported coastwise in a non-qualified U.S. vessel without being in violation of 46 U.S.C. 883 when said vessel is in foreign trade and the fish are to be exported

Date: July 12, 1982.
File: VES 3-17 CO:R:CD:C
105705 DHR

This ruling concerns the use of a non-coastwise qualified U.S.-flag vessel to transport containerized frozen fish between U.S. ports.

Issue

Whether a non-coastwise-qualified U.S.-flag vessel may transport containerized frozen fish between U.S. ports (Seattle, Washington,

and Oakland, California) pursuant to the 8th proviso of 46 U.S.C. 883.

Facts

It is proposed to transport frozen containerized fish from Anchorage, Alaska, to Seattle, Washington, on vessel "A", a U.S.-flag vessel which is qualified for the coastwise trade. At Seattle the fish would be transferred onto vessel "B" a U.S.-flag vessel of the same line which would arrive in Seattle on a voyage from a foreign country and which is not qualified to engage in the coastwise trade. Vessel "B" would transport the fish to Oakland, California, where the fish would be unladen and transferred onto a foreign-flag vessel for transportation to the Far East.

Law and Analysis

Title 46, United States Code, section 883, in general prohibits the transportation of merchandise on a foreign-built or foreign-flag vessel between points embraced within the coastwise laws of the United States. The statute contains various provisos setting forth exceptions to the general prohibition. The eighth proviso states, in pertinent part, that until April 1, 1984:

> Any vessel documented under the laws of the United States [vessel "B"] * * * may, when operated upon a voyage in foreign trade [from the Far East to Seattle and Oakland], transport merchandise in cargo vans [containerized fish] * * * between points embraced within the coastwise laws [Seattle to Oakland] * * * when transferred from another vessel * * * so documented and owned, of the same operator [vessel "A"] when the merchandise movement has * * * a foreign destination [Far East] * * *.

Holding

Until April 1, 1984, a non-coastwise-qualified U.S.-flag vessel may transport containerized frozen fish between Seattle and Oakland without being in violation of Title 46, United States Code, section 883, provided the fish were transferred from another vessel of the same line, and provided that the vessel under consideration is being operated at the time on a voyage in foreign trade and that the fish are subsequently to be transported to a foreign destination.

(C.S.D. 82-146)

This ruling holds that a vehicle, vessel, or aircraft bond is required for certain activities of vessels between Puerto Rico and the Virgin Islands

Date: July 13, 1982
File: BON 2-01 CO:R:CD:C
105620 DHR

This ruling concerns the filing of bond in order that a vessel may engage in certain activities.

Issue

Whether a Vessel, Vehicle, or Aircraft Bond (CF 7567 or 7569) must be on file in order that a vessel may engage in the following activities:

A. Reporting arrival from the U.S. Virgin Islands and completing some incidental Customs formalities during regular working hours, such as clearing crew purchases, of a U.S. flag vessel in ballast.

B. Reporting arrival and completing entry, during regular working hours, of a foreign-flag vessel arriving in ballast from the U.S. Virgin Islands to load cargo.

C. Same as B., but from a foreign port.

D. Obtaining a Permit to Depart by a U.S. flag vessel with cargo for the U.S. Virgin Islands only, where all required Shippers' Export Declarations have been filed with Customs prior to departure.

E. Completing a clearance during regular working hours by a foreign flag vessel clearing complete:

(1). For U.S. Virgin Islands only,

(2). For foreign ports.

Law and Analysis

Customs bonds are, of course, required for the protection of the revenue or to assure compliance with all applicable laws and regulations. Laws concerning the arrival, entry, clearance, and movement between U.S. ports of vessels have attendant penalties for failure to comply with them. Also, fees are charged for Customs services and tonnage taxes are assessed. The Customs Service is authorized by statute to require such bonds as it may deem necessary for the protection of the revenue or to assure compliance with any provision of law or regulation which is enforced by Customs (19 U.S.C. 1623). Normally, however, unless specifically required by a statute or regulation or when a specific reason, such as a prior record of penalties being assessed, exists, a bond should not be required just to be "safe." Nevertheless, whether or not a bond shall be required lies within the discretion of the District Director.

It should be noted that your inquiry, and therefore this ruling, relate only to vessels arriving in ballast, departing with the filing of all required SED's, and arrivals and departures during regular working hours. Therefore, bond requirements relating to overtime or the unlading of cargo in section 4.30, Customs Regulations, and bond requirements relating to incomplete SED's in section 4.75, Customs Regulations, are not discussed.

With respect to foreign-flag vessels operating between the U.S. Virgin Islands and the United States (including Puerto Rico), the Virgin Islands are considered foreign insofar as the applicability of the navigation laws are concerned (see subsections (a) and (b) of section 4.84 Customs Regulations). With respect to U.S.-flag vessels, the Virgin Islands are neither foreign nor domestic and the vessels are subject to modified navigation laws and regulations (see subsections (c) and (d) of section 4.84, Customs Regulations).

Holding

A. The failure to report arrival is punishable by penalty of $1,000 (19 U.S.C. 1436). If the District Director decides to require a bond (see above), the bond would of course assure that if arrival is not reported, the fine will be paid. A bond would not be appropriate for the clearance of crew purchases because any duty owed is a liability of the individual crew members and not of the vessel. Further, the requirements of section 4.30, Customs Regulations, with regard to the landing of crew purchases can be met by cash deposit.

B. A foreign vessel arriving in Puerto Rico from the Virgin Islands is required to report the arrival and make entry within 24 and 48 hours respectively. Failure to do so subjects the master to a fine $1,000 for each offense (19 U.S.C. 1436). If the District Director decided to require a bond (see above), the bond would of course assure payment of the fine.

C. Same as B.

D. If all required Shippers' Exports Declarations have been presented before the departure of a U.S.-flag vessel for the U.S. Virgin Islands, the filing of a bond prior to obtaining permission to depart in order to assure that SED's will be filed would be superfluous.

E. If all formalities for obtaining a clearance have been complied with before a clearance is granted to a foreign vessel departing either for the U.S. Virgin Islands or for foreign ports, including the filing of a complete outward manifest, there would be no need to have a bond on file to assure that the vessel will comply with all the clearance requirements.

As you know, a single entry bond will serve to cover all transactions of a vessel at each port on a voyage touching at one or more U.S. ports. A bond filed to cover any one of the transactions will, by its terms, cover all of them.

(C.S.D. 82-147)

Transaction Value: This decision holds that, pursuant to section 402(b)(4)(A), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, certain insurance premiums incurred by a foreign supplier to ensure against non-payment by a foreign buyer, passed through to the United States importer as part of A CIF duty-paid price, are dutiable under transaction value

Date: July 14, 1982
File: CLA-2 CO:R:CV:V
542857 BLS

To: Area Director of Customs, New York Seaport, New York, New York 10048.
From: Director, Classification and Value Division.
Subject: Internal Advice Request 118/82, Dutiable Status of "ECGD" Premiums.

This is in reference to your memorandum dated July 1, 1982, involving the above-captioned matter.

Issue

Whether certain insurance premiums incurred by the British supplier to ensure against non-payment by a foreign buyer, passed through to the United States importer as part of a CIF duty-paid price, are dutiable under transaction value.

Facts

An agency of the British Government, the Export Credit Guarantee Department, offers an insurance policy ("ECGD") to exporters of British merchandise which guarantees 90 percent payment on their overseas shipments in the event of default or bankruptcy of the foreign buyer, import restrictions in the buyer's country, etc. A premium is charged to the supplier based on the value of the individual overseas shipment.

The British supplier sold the subject merchandise to the importer on a CIF, duty-paid basis, and included the premium charge as part of the invoice price. The broker now claims that such charge is an item of insurance as provided for in section 402(b)(4)(A), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), and therefore it should be disregarded in determining transaction value.

Law and Analysis

Section 402(b)(1), TAA, provides in pertinent part that the transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States. Section 402(b)(4)(A) provides that the term "price ac-

tually paid or payable" means the total payment (whether direct or indirect, *and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States)* made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. Emphasis added.

The broker argues that ECGD is an item of insurance, and as such is provided for under section 402(b)(4)(A), which excludes insurance *per se* as a non-dutiable cost, because it is in fact an item incident to the international shipment of merchandise from the country of exportation to the place of importation in the United States.

On the other hand, you point out that the ECGD charge is in addition to the usual marine insurance, and has nothing to do with the international shipment of the goods. This charge merely ensures the reception of payment by the seller. Therefore, you believe that the ECGD charges are dutiable under transaction value since they are part of the price actually paid or payable and are not the type of insurance to be disregarded under section 402(b)(4)(A).

Holding

The documentation describing the "ECGD" clearly establishes that this insurance does not cover risks involved in the international shipment of the merchandise, nor is the charge in some manner incurred for transportation and related services incident to such international shipment. Rather, the premiums merely ensure payment for the goods in case of default, etc., by the buyer.

Under these circumstances, we find such costs to be part of the "price actually paid or payable for the merchandise", and therefore dutiable charges under transaction value.

(C.S.D. 82-148)

This decision holds that, pursuant to section 402(e)(2)(B), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, the general expenses of an exporter, which are paid for by the importer, may not be imputed to the exporter as an assist or otherwise

Date: July 20, 1982
File: CLA-2-CO:R:CV:V 542873 IWS
TAA #44, Supplement #1

To: District Director of Customs, El Paso, Texas 79985.
From: Director, Classification and Value Division.
Subject: TAA #44, Dutiability of Certain General Expenses (IA 169/81, Control number 542658, LD82-0039).

In reviewing TAA #44, it has come to our attention that there may be some confusion over the last paragraph of the ruling regarding the requirements of Section 402(e)(2)(B), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Accordingly, please substitute the following paragraphs for the last paragraph of the ruling.

The question of whether the producer's profit and general expenses are consistent with the profit and general expenses usually reflected by producers in the country of exportation in sales of merchandise of the same class or kind is, of course, a question of fact which will vary depending on the particular point in issue. Our authority for rejecting figures relating to the producer's general expenses is clearly limited under section 402(e)(2)(B) of the TAA to those situations where such figures "are inconsistent with those usually reflected in *sales* of merchandise of the same class or kind (emphasis added) * * *" However, it may be entirely possible that certain expenses that heretofore may have been considered general expenses under previous law would continue to be treated as being dutiable under 402(e)(1)(B) if "usually reflected, * * *" etc. For example, that portion of plant rental relating to the selling of merchandise of the same class or kind for exportation to the United States may properly be treated as being dutiable as "an amount" for profit and general expense if included in the producer's profit and general expenses.

However, if the absence of such expense from the producer's general expenses results in that producer's profit and general expenses being "inconsistent with those usually reflected in sales of merchandise of the same general class or kind", the actual profit and general expenses of that producer should be rejected and the usual profit and general expenses substituted therefor. There is no authority under the law to adjust the producer's actual general expenses.

(C.S.D. 82-149)

This ruling holds that the designs, samples, prototypes, patterns and photographs of garments furnished to the foreign manufacturer under Section 402, Tariff Act of 1930, as amended, are not dutiable assists, but rather are specifications reflecting instructions to the manufacturer as to what to produce. This ruling does not hold that all patterns, designs, samples, etc., furnished to a foreign manufacturer for the production of apparel are non-dutiable

Date: July 28, 1982
File: CLA-2 CO:R:CV:V
542830 BS

To: District Director of Customs, New Orleans, Louisiana 70130.
From: Director, Office of Regulations and Rulings.
Subject: Request for Internal Advice; Dutiability of Designs, Sketches, Patterns, etc., Furnished to the Manufacturer; Reconsideration of I.A. 75/128.

This is in reference to your memorandum dated May 11, 1982, regarding the above-captioned matter.

Issue

Whether certain patterns, designs, pattern tracings, photographs, and prototype garments, furnished to the foreign manufacturer, are dutiable assists under section 402, Tariff Act of 1930, as amended.

Background

The importer is a company engaged primarily in the sale of skiwear and other sports apparel. In the course of having various garment lines manufactured abroad, the importer furnishes to the foreign manufacturers certain sketches, designs, patterns, photographs, and prototype garments as an aid in producing the imported merchandise.

The actual function of these items to the manufacturer, and their essentiality to the manufacturing process, are the primary questions, the answers to which will determine their dutiability. In this regard, the importer has provided a detailed description of the manner in which they select a particular garment line. This is relevant in understanding the nature of these items and their function to the foreign manufacturer. Furthermore, while the description relates primarily to the importer's business practices, it may be that a significant segment of the garment industry operates in a similar fashion.

A. *Selection of a Garment Line.* Selection of garments for placement into the line, and the actual marketing of the line on a national basis, are dependent upon the marketing conditions in the

United States and the existing common garment styles. The importer seeks to select lines which will sell to a wide range of consumers at moderate, medium, and high prices. In addition, profitability, sales volume, and customer acceptance are all major factors in the selection process. The importer, therefore, creates sufficient garments to give the individual merchandiser of the product line a wide selection from which to chose garments for the line which will have the greatest sales appeal and generate the greatest volume. Marketing merchandisers are responsible for the development and sale of the line. They must decide which garments can be profitably produced and sold. As a result, there is frequent communication between the designer and the merchandiser in reaching decisions concerning the individual styles which will ultimately sell as the complete line.

Generally, to create a commercially acceptable line most of the garments produced represent the following:

(1) Modifications or changes to those garments which have existed in prior lines and earlier years;

(2) Modifications of styles which have previously been included in a competitor's line;

(3) Modifications of ideas gained from attendance at trade shows or from samples of garments received from foreign manufacturers.

In addition, certain of the garments finally accepted into the line result from design modifications from samples sent by suppliers or agents in the Far East, or from samples procured from retail stores in Europe or in the United States.

(1) *Designer/Stylist Activities.* Designer/stylists, who may or may not have professional training, are hired because of their experience in the industry and because of their sensitivity to and knowledge of the style and type of garments which can be successfully marketed.

Before preparing preliminary sketches of a line of wearing apparel, designers or stylists for all major companies will travel to trade shows, both in the United States and abroad, to learn which styles are available and to keep abreast of the lastest fashion trends.

At the shows, they draw sketches from styles seen at the show. Alternatively, sketches or photographs will be made of garments worn by people in the street, of shop windows, and of garments seen at the ski fashion centers of the world, such as St. Moritz, London and Paris. These activities may include the purchase of competitors' products which are available in the market place in the United States or abroad.

Designers also meet with the importers' customers to gain an understanding of the styles which are currently popular and to elicit opinions as to the sales appeal of styles which are currently available. Frequently, the customers will recommend that certain features be incorporated into garments. These ideas may then be in-

corporated into the garment line which is ultimately produced. Additionally, recommendations from management and from merchandising personnel are made.

Finally, the designers review professional service bureaus' information, including marketing analyses and concepts of current trends and styles, trade publications and fashion magazines which illustrate the latest styles.

In summary, the design concepts for the imported garments selected by the importer's merchandisers for inclusion in the line ultimately sold on a national basis emanate from several sources. These sources include:

a. Garments which are available to the general public at retail. Such garments are either purchased at retail by the importer's employees during their travels or are otherwise supplied free of charge by the manufacturer.

b. Sample garments supplied principally by the company's foreign manufacturers or, on occasion, by a buying agent.

c. Ideas gleaned from fashion publications, attendance at trade shows, ski fashion centers of the world, and from customer ideas.

d. Single size patterns an garments made therefrom which are available in the European marketplace and which are supplied by certain European manufacturers, in advance of the season.

The designers rework the design concepts of these garments into the line with modifications where appropriate.

2. Preparation of Sketches and Specifications. After a designer has familiarized himself or herself with current fashion trends, he or she develops a line plan for a series of garments in the form of preliminary sketches. This plan will be developed in conjunction with management or merchandising personnel conversant with the manufacturer's capabilities and importer's resources. The concept of a line plan is generally reflected in a series of very general sketches. This may range from a few to several hundred. From these sketches a selection is made of those which will be subject to preparation of more detailed sketches.

The Action Sportswear Division of our client includes the various ski products by the company. These garments include jackets, pants, bibbers, ski suits, and sweaters. There are also several product lines marketed under different names.

The individual garments within the line generally represent variations and modifications to existing styles which are viewed at trade shows in the United States or abroad, at various stores throughout the United States and Europe, at fashion centers and ski areas, or in fashion magazines reviewed as part of market research.

The preliminary conceptual sketches showing the various possible looks in developing the concept or line plan will generally be made in large quantities. From this large quantity of original conceptual sketches, a selection is made by the designer of those which

are available to receive a more detailed treatment. A more detailed conceptual sketch is then prepared.

The detailed sketches are then subjected to further review by the designers and the merchandising staff. A number of these designs will be selected and hard copy specification prepared. The number of hard copy sketches produced from preliminary sketches generally averages one hard copy for four to six detailed sketches.

Once selection of a range of style sketches has occurred, written specifications are also prepared. Sample "first" garments will be made up from the selected designs.

C. Manufacture of Prototype "First" Garments in the Model Room. The next step in the selection process is to manufacture prototype "first" garments which are variations of the style and color of the same pattern. Hence, from one pattern four to six different prototype garments may be produced.

The pattern maker cuts the pattern for a standard size garment, such as ladies' medium or a men's "40". Once the patterns are cut, the fabric is cut with the use of the patterns and the patterns and fabric given to the sewers who sew together the variety of the "first" garments.

On the overall average, for every garment selected for the line, four patterns are made and rejected, and for each prototype garment selected, four to six garments are rejected.

After conceptual approval by the merchandiser of designer sketches for their possible inclusion in the line, first prototypes are produced either in the United States or abroad. This work is performed by patternmakers who interpret the sketches, translating them into paper pattern tracings. These sketches pictorially show the garment as conceived, along with certain critical key data such as zipper length, sleeve length, back length, etc. After review and selection of particular styles, first countersamples are made from these paper tracings to enable the importer to determine if the manufacturer has properly interpreted the information supplied him. This prototype garment enables merchandisers employed by the importer to make a final determination of the marketability of the garment, of whether it fits into the specific line of garments, and of whether the garment should be manufactured in the United States or abroad.

D. *Costing.* Once a "first" garment is selected for potential production, the information necessary to determine the cost of producing the garment is prepared. The garment and pattern will be provided to the Engineering Department, to determine the fabric usage. Other personnel will determine the costs for the fabric, and the costs for the necessary zippers, snaps, buttons, tabs, trim, and any other items involved in production of the garment.

When this cost information is available, the garment will again be reviewed to determine if it can be sold at a profit in the line.

Particular features on the garment found to be too expensive may be modified at this time, or less expensive features substituted.

E. *Final Selection of "First" Garment and Specifications Supplied to the Manufacturer.* Once the styles to be included in the line are tentatively selected from the "first" garments, a decision is then made as to whether the garments will be manufactured domestically or abroad. If the garments are to be made at a foreign plant, a pattern tracing will be prepared and sent, together with photographs, to the foreign manufacturer. The importer produces this sample garment only from the photographs and specifications. The pattern tracings are sent as a guide to ensure uniformity of sizing and to reduce the need for corrections and subsequent remanufacture of samples.

The style of the garment is reviewed by the merchandiser and appropriate selections or changes are made. Generally, for the Outerwear and Sportswear Divisions a rejection or modification factor of one to four occurs, and for Action Sports and Tennis a factor of one to six occurs.

F. *Manufacture Abroad of Countersamples.* The foreign manufacturer will then prepare countersamples which are returned to the importer for review. Once the merchandiser is satisfied from reviewing the garment, and a determination has been made that production will be potentially profitable, individual garments will be selected for production.

G. *Preparation of Computer Graded Patterns.* After selection of the garment, the pattern is sent to a computer grading service to prepare graded patterns for submission to the foreign manufacturer. These patterns are graded and prepared for each size in which this garment will be manufactured abroad, such as S, M, L. and XL.

The importer uses graded patterns to develop uniformity and consistency for the consumer in the sizes specified. Graded patterns in the garment sizes to be manufactured are always made by the foreign manufacturer from the standard size pattern used to manufacture prototype garments or first garments. The graded patterns are used for the purpose of providing the consumer with uniform size garments.

The foreign manufacturers employ their own patternmakers to cut patterns for the various sizes of garments to be manufactured, to make adjustments or corrections to existing graded patterns to make first garments from sketches and/or specifications, or to prepare samples from their own designs or from garments obtained from other sources.

H. *Function of Foreign Patternmakers.* The foreign garment manufacturers utilized by the importer generally have in their employ one or more patternmakers who have the necessary expertise to translate conceptual sketches into production quality garments, without further details supplied by the importer as to specifica-

tions, paper tracings, measurements, photographs, or graded patterns.

Specific and general information as to the types of merchandise being sold by the importer is readily available to these foreign manufacturers as they specialize in making garments for export to the United States.

I. *Foreign Manufacturers' Capacity to Manufacture Graded Patterns.* The importer submits in evidence statements from the various foreign manufacturers attesting to their ability to grade patterns for the importer if desired, and that they do grade patterns for other companies.

Claims of Importer. Based on the above facts, the importer argues that the new garments placed in the line are merely modifications of existing styles which are common knowledge in the industry, have previously been marketed, and are therefore in the public domain for copying; that the foreign manufacturers possess the capacity to produce the garments in the various sizes without the aid of the sketches, designs, patterns, et cetera, which do not reflect a change to the basic garment; and that these items are in the nature of specifications incurred to market the garments but are not intended to show the manufacturer how to produce the imported garments.

District Director, New Orleans (Memorandum dated May 11, 1982). The majority of the imported garments reflect certain basic styles and not avant-garde fashion goods. They reflect prototypes of garments purchased by the importer from garment and department stores located in Europe. Therefore, such garments are in the public domain.

The evidence also shows that the manufacturers in question have demonstrated that they have the technical expertise to manufacture such garments as well as graded patterns.

Therefore, the information provided by the importer to the manufacturers constitute marketing specifications for the benefit of the importer and any assistance these specifications extend to the manufacturers are incidental.

District Director, Seattle. The design changes from season to season are more than a mere positioning of buttons and loops, and are the result of considerable time spent by designers reflecting the latest in styling. A definite change to the original design is effected, and therefore a dutiable assist is involved.

While similar patterns may be in the public domain, the particular designs and patterns prepared by the importer are not in the public domain and are dutiable assists.

District Director, Portland, Oregon. The photographs, pattern tracings, graded patterns, etc., reflect the importer's unique "look" or styling differentiated from the comparable patterns available in the public domain in retail stores. Therefore, these items of cost are dutiable assists.

Law and Analysis

It is settled law that the cost of designs, patterns, blueprints, and molds, which are used in the making of articles are part of the cost of production thereof within the meaning of the tariff statutes. See *Goodrich-Gulf Chemicals, Inc.* v. *United States,* R.D. 11733 (1971). Thus, where shop drawings designated as "sketches and specifications" were found necessary to the development and production of the imported merchandise, they were held to be dutiable costs of manufacture. See *Troy Textiles Inc.* v. *United States,* 64 Cust. Ct. 654, R.D. 11697 (1970). In that case, the Customs Court held that the imported steel rollers could not have been brought to their condition as imported without the subject designs being present to be used as a guide by the engraver.

However, where certain drawings merely conveyed to the manufacturer specifications for imported steel plates, but conveyed no actual details of fabrication, it was held that no dutiable assist was involved. See Headquarters Letter Ruling 541471, dated June 21, 1977. This ruling followed the opinion of the court in *Exbrook, Inc.* v. *United States,* 69 Cust. Ct. 224, R.D. 11772 (1972), where the court held that specifications which every buyer must give the manufacturer are not part of the cost of producing merchandise.

In ORR Ruling 541455, dated September 28, 1977, we stated the following:

> It is our position, that what should be controlling is the position of the foreign manufacturer vis-a-vis the drawing received. If the foreign manufacturer does not possess the technical expertise to manufacture the ordered items without the drawing specifications then such a drawing would properly be treated as dutiable. However, if the manufacturer possessed the requisite technical expertise and treated the drawing as it would any narrative specification, then the drawings would not be treated as being dutiable.

In Headquarters Letter Ruling 061118, dated April 18, 1979, the buying agent of the importer redrew sketches of wearing apparel furnished to him by the importer. The sketches were then forwarded to the foreign manufacturers, who in turn prepared their own drawings prior to producing the wearing apparel. The sketches illustrated desired styling effects and communicated certain instructions to the manufacturers in Chinese.

We pointed out in that case that the sketches communicated only dimensions and buyer specifications, such as the location on the wearing apparel of buttons or belt loops. In addition, the evidence indicated that although a narrative description of the specifications would have sufficed, it was thought that there would be less likelihood of confusion in conveying the information if the specifications were conveyed in picture form. The finding that the sketches were non-dutiable had the effect of a determination that the manufac-

turer had the necessary expertise to produce the garments without the necessity of the sketches.

However, while we found that the sketches appeared to relate primarily to the purchaser's role in the transaction and his knowledge of what would sell in the U.S. market, we also pointed out that where styling or design drawings are necessary to develop and produce the imported merchandise, the cost of preparing the drawings would be includable in the dutiable value of the merchandise.

The same reasoning was applied where the importer furnished actual samples of garments to the manufacturer. (See Headquarters Letter Ruling 542591, dated September 18, 1981.) In that case, we pointed out that if the samples conveyed technical information without which an article could be made, they were dutiable as assists. However, if the manufacturer was capable of producing the article without the samples and, in fact, did not use them to manufacture the article, the sample would be analagous to narrative specifications and not an assist.

The manufacturer's ability to produce the garments without the samples was reflected in part by the fact that some of the samples were European-sized (not U.S. sized), and others were men's and children's garments. (The imported merchandise was all women's apparel).

While this fact was relevant to the determination in that instance, whether a particular manufacturer has the expertise to produce the imported product without the importer's designs, samples, etc., is a question to be deduced from all of the evidence.

Holding

The record shows that the garments imported into the United States generally reflect style changes and/or modifications of existing garments or designs that are readily available to the public or to the industy for acquisition or duplication. Thus, the modified designs, etc., are in the nature of specifications.

Furthermore, the record also shows that the manufacturers in this instance have the capability to produce the desired garments without the necessity of using the photographs, sketches, designs, prototypes and patterns furnished by the importer. While these specifications reflecting the desired styling could have been conveyed orally to the manufacturers, it is apparent that the process of communication is facilitated by the use of photographs, designs, samples and patterns, which ensure that the garment will be produced to the importer's exact specifications.

Under these circumstances, we hold that the designs, samples, prototypes, etc., furnished to the manufacturers are not dutiable assists, but rather are specifications reflecting instructions to the manufacturer as to what to produce, but not how to produce, the particular garment.

We do not hold that all patterns, designs, samples, etc., furnished to a foreign manufacturer for the production of apparel are nondutiable. In instances where the pattern or design is unique, and not a minor modification of an existing style, and where the manu-

facturer cannot produce the merchandise without the pattern, design, etc., dutiable consequences will result.

Internal Advice 75/128 (Headquarters Ruling 541462, dated October 13, 1977).

This ruling concerned the dutiable value of designs actually used in the production of imported apparel.

Since we have found that no dutiable consequences arise from the subject transactions, the determination of a value for the used designs has become moot.

(C.S.D. 82-150)

This ruling holds that freight and insurance costs incurred to transport materials used in the repair of articles shipped abroad under item 806.20, TSUS, are dutiable as these costs are considered part of the cost or value of the materials; while freight and insurance costs incurred to transport the articles to be repaired are not dutiable

Date: July 30, 1982
File: CLA-2 CO:R:CV:V
542866 BLS

To: District Director of Customs, Nogales, Arizona 85621.
From: Director, Classification and Value Division.
Subject: Internal Advice 104/82; Dutiability of Freight and Insurance Costs Incurred in Transporting Repair Materials Under Item 806.20, TSUS.

This is in reference to your memorandum dated June 9, 1982, regarding the above-captioned matter.

Issue

Whether freight, insurance and related costs incurred to transport repair materials from the United States to the foreign facility are dutiable under item 806.20, TSUS.

Background

A manufacturer-distributor of certain home video computer systems has contracted with an unrelated Mexican facility to perform repair work on components returned by the ultimate consumers to the retail dealers. The manufacturer ships the units to the Mexican facility to be repaired and then returned pursuant to item 806.20, TSUS. Certain foreign and domestic components and materials are shipped from the United States to the Mexican plant to be used in the repair.

Law and Analysis

Under item 806.20, TSUS, articles exported for repairs or alterations are dutiable upon return to the United States on the value of the repairs or alterations performed abroad.

Section 10.8(1) of the Customs Regulations provides in pertinent

part that "the cost or fair market value, as the case may be, of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under item 806.20, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans and specifications, and furnishing of tools or equipment for doing the repairs or alterations abroad or otherwise."

Headquarters Letter Ruling 74–400027, dated December 22, 1976, concerned the determination of the cost or value of processing abroad under item 806.30, TSUS. In that ruling, we noted that under section 10.9(1) of the Regulations, those expenses incurred in the United States which were directly attributable to the exported United States metal article were excluded from the cost or value of the processing abroad, but expenses incurred in the United States which were directly attributable to the other components or materials were to be included in the cost or value of the processing done abroad.

Thus, we held that freight and insurance for the U.S. metal component from the place of shipment in the United States to the foreign subsidiary were excluded from the cost or value of the processing abroad, because the expenses were incurred in the United States. However, the freight and insurance applicable to the other non-qualifying components and materials from the place of shipment in the United States to the foreign subsidiary were dutiable as part of the cost or value of the foreign processing.

Conceptually, we see no difference between item 806.30, TSUS, and 806.20, insofar as the dutiable value of materials or components used in repair or processing is concerned. In this respect, we note that the language of section 10.8(1) of the Regulations is almost identical to section 10.9(1), except that the former deals with repairs or alterations (item 806.20) and the latter with processing (item 806.30). In either case it is clear that transportation costs incurred to move these materials from the United States to the foreign facility for repair or processing are considered part of the cost or value of the materials, while the transportation costs incurred to move the articles to be repaired are not.

Holding

Freight and insurance costs incurred to transport domestic or foreign materials used in the repair of articles shipped abroad under item 806.20, TSUS, are dutiable since such costs are considered part of the cost or value of the materials. However, freight and insurance costs incurred to transport the articles to be repaired are not dutiable.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82-87)

BAR BEA TRUCK LEASING CO., INC., PLAINTIFF *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Court No. 82-4-00582-S

BERNARD NEWMAN, *Judge.*

ON DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

[Defendants' motion for protective order granted; remanded to Customs Service for further proceedings.]

(Dated October 15, 1982)

Fredric J. Gross, Esq., for the plaintiff.

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*John J. Mahon*, Assistant Branch Director and *Saul Davis, Esq.*), for the defendants.

BERNARD NEWMAN, *Judge*.

I

Stripped of all esoterica, this entire matter demands expeditious disposition.

Defendants' motion for a protective order in response to plaintiff's notice of depositions raises an issue of first impression respecting the scope and standard of review applicable to an action contesting the denial of a customhouse cartage license by the United States Customs Service. Subject matter jurisdiction over such an action is predicated upon the residual provisions of 28 U.S.C. § 1581(i). See 4 CIT —, Slip Op. 82-72 (September 8, 1982) and 4 CIT —, Slip Op. 82-81 (September 28, 1982).

Again, attention is directed to 4 CIT —, Slip Op. 82-64 (August 11, 1982), cross-appeals pending, wherein the complex factual background of this litigation is reviewed.

My order of September 8, 1982 directed that plaintiff's notice of depositions and defendants' motion for a protective order would be held in abeyance until the administrative record was transmitted to the Court by the Area Director at Newark, New Jersey, at which time the scope and standard of review applicable in this action could be considered.

By an order entered on October 1, 1982 (unpublished), I stayed the order of September 8, 1982 (Slip Op. 82-72), and directed Customs at Newark to transmit the administrative record to the Court within ten days of the order (viz, by October 12, 1982). On October 12, 1982 the administrative record (with certain exceptions) was filed by defendants, together with a consent motion to extend the time for three days (until October 15, 1982) within which to file the complete administrative record. The requested extension was granted to allow the government adequate time within which to move for a protective order covering certain parts of the administrative record claimed to be privileged or confidential.

II

As previously held in Slip Op. 82-72, preliminarily to deciding whether the depositions noticed by plaintiff should be permitted, this Court must determine whether Customs' denial of plaintiff's

application for a cartage license should be reviewed *de novo*, as argued by plaintiff, or reviewed on the administrative record, as insisted by defendants in their motion for a protective order.[1]

As specified in 28 U.S.C. § 2640(d), the scope and standard of review in an action such as the present one is governed by 5 U.S.C. § 706, part of the Administrative Procedure Act (APA). In every case involving judicial review of agency action under the APA, the reviewing Court must set aside action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or action taken contrary to various constitutional, statutory or procedural requirements, 5 U.S.C. §§ 706(2)(B), (C) and (D). In two additional, narrowly defined instances, agency action must be set aside if the Court finds that the action was "unsupported by substantial evidence", 5 U.S.C. § 706(2)(E), or if after a trial *de novo* the Court concludes that the action was "unwarranted by the facts". 5 U.S.C. § 706(2)(F). *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 414–15 (1971).

The "substantial evidence" test (§ 702(2)(E)) is authorized only in instances where agency action is predicated upon a public adjudicatory hearing (see 5 U.S.C. §§ 556, 557), or where agency action is taken pursuant to a rulemaking provision of the APA (see 5 U.S.C. § 553). *Citizens to Preserve Overton Park* v. *Volpe, supra*, at 414; *Camp* v. *Pitts*, 411 U.S. 138, 141 (1973). Neither party argues that the substantial evidence standard is applicable in this case; and I find that the requisite circumstances for such standard are absent here: first, the Area Director's denial of plaintiff's license application was not based on a public adjudicatory hearing; and second, the Area Director's action plainly does not constitute "rulemaking". See 5 U.S.C. § 551 (4) and (5).

As mentioned *supra*, plaintiff contends that the Area Director's action should be reviewed *de novo* by the Court. The Supreme Court has held that one of the two circumstances for invoking *de novo* review under 5 U.S.C. § 706(2)(F) is "when the action is adjudicatory in nature and the agency factfinding procedures are inadequate". *Overton Park, supra*, 401 U.S. at 415; *Camp* v. *Pitts, supra*, 411 U.S. at 142. If under the licensing procedures of the Customs Service plaintiff was afforded no opportunity to be heard prior to the denial of its application, or to respond to the information provided to the Area Director and upon which he relied in denying plaintiff's application, a trial *de novo* before this Court would be a possible procedures. *Cf. Secretary of Labor* v. *Farino*, 490 F.2d 885, 891 (7th Cir. 1973).

On an application for a cartage license pursuant to 19 CFR §§ 112.21, *et seq.*, no hearing is provided.[2] Nor is any hearing afford-

[1] After filing their motion for a protective order, defendants filed a renewed motion to dismiss, urging for the first time that judicial review was precluded under 5 U.S.C. § 701(a)(2) on the basis that denial of plaintiff's application for a cartage license by the Area Director at Newark is "agency action * * * committed to agency discretion by law". Under that provision, agency action "committed to agency discretion by law" is exempt from judicial review. Defendants' motion to dismiss was denied in Slip Op. 82–81.

[2] *Cf.* 19 CFR § 111.14(e) (customhouse brokers' licenses).

ed an applicant in the event that an application is denied.[3] It is now well established that an agency's procedures are not inadequate simply because no formal hearing is required. *Camp* v. *Pitts, supra; Proietti* v. *Levi,* 530 F.2d 836, 838 (9th Cir. 1976); *American Consumer, Inc.* v. *United States Postal Service,* 427 F. Supp. 589, 591 (E.D. Pa. 1977).

Here, however, not only was no formal hearing afforded to plaintiff before or after the denial of its application, no right to be heard or to participate in the investigation in any manner at any stage of the proceedings was afforded to plaintiff under the Customs regulations.[4] Under these circumstances, it would be permissible for the Court of International Trade either to conduct a trial *de novo* or to remand the matter to the agency for further proceedings. *Cf. Farino, supra,* 490 F.2d at 891. In *Farino,* the Court of Appeals stressed: "Where the district court has the power either to conduct a trial *de novo* or remand for further agency proceedings, it is a question of judicial policy which course to follow". *Id.,* at 892.

In an action contesting the denial of an application for a cartage license, I conclude that remand to the agency (District Director) for further consideration of the application is the procedure of choice. On that score, the perceptive comments by Judge Davis of the Court of Claims [5] (quoted in *Farino,* 490 F. 2d at 892) are especially apposite:

> Congress actually wanted and expected the agency to make the determination, with some judicial oversight but not until after the administrative findings. There is no reason to believe that, under proper procedures, the Board cannot or will not achieve a fair result, taking account of all presentations to it. * * * Moreover, the intricate, specialized, and indeterminate nature of the determination * * * makes it particularly appropriate for an expert administrative body with continuing experience in the field to make the first full canvass of the problem. * * * *This is an instance, we believe, in which the need, at the administrative level, is not for a formal trial but for better 'opportunity for party participation.' Moore-McCormack Lines, Inc.* v. *United States,* 413 F. 2d 568, 588–590, 188 Ct. Cl. 644 (1969). [Emphasis added.]

III

I find that review in the instant case shall be on the administrative record, and that the denial of plaintiff's application must be set aside in the event the Court should determine that such denial

---

[3] *Cf.* 19 CFR § 111.17 (customhouse brokers' licenses).

[4] The administrative record contains a letter dated July 2, 1982 from Barbara B. Gallagher, plaintiff's president, to Customs in response to Customs' decision-letter of June 29, 1982 to plaintiff rejecting plaintiff's license application. However, there is no indication in the record as to what, if any, consideration was given to the information set forth in plaintiff's letter of July 2, 1982.

[5] Under the Federal Courts Improvement Act of 1982, the former United States Court of Claims and the United States Court of Customs and Patent Appeals were "merged" into the new United States Court of Appeals for the Federal Circuit, effective October 1st, 1982.

was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" as provided in 5 U.S.C. § 706(2)(A). In that connection, the Supreme Court decided in *Overton Park,* 401 U.S. at 416:

> Section 706(2)(A) requires a finding that the actual choice made was not 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' * * * To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. * * * Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency.

Since I hold that the scope of review in this action is on the administrative record and that the standard of review is prescribed by 5 U.S.C. § 706(2)(A), plaintiff's notice of depositions is unnecessary and inappropriate as there has been no showing of bad faith or improper behavior on the part of the Customs officials plaintiff seeks to depose. *Overton Park,* 401 U.S. at 420. Accordingly, defendants' motion that discovery not be had at this time is granted; and the notice of depositions served by plaintiff on August 2, 1982 is vacated.

It is further ordered that the action is remanded to the Area Director at Newark, New Jersey for an expeditious reconsideration. On remand, plaintiff may submit affidavits or other evidence to the Area Director in support of its application within twenty days of the entry of this order. The Area Director may conduct any further proceedings consistent with this opinion and shall, based upon the entire administrative record, including any submissions by plaintiff, render a new decision on plaintiff's license application. The Area Director shall advise plaintiff and this Court of the new determination and the reasons therefore within forty days of the entry of this order; and

Further, it is ordered that in the event plaintiff's application is again denied by the Area Director, plaintiff may within fifteen days of the receipt of the Area Director's new decision file any appropriate motion. Defendants may respond within fifteen days of the receipt of any motion by plaintiff. Plaintiff shall have five days from receipt of defendants' response within which to reply.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *October 21, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/165	Watson, J. October 14, 1982	Kosmos International U.S.A. Inc.	81-5-00598	Item 715.31 75¢ each + 16% (clock portion) Item 676.20 5% (calculator portion)	Item 676.20 5% (combination article)	Agreed statement of facts	Atlanta (Savannah) Combination electronic clock/calculator single article

P82/166	Maletz, J. October 14, 1982	Mitsubishi International Corp.	72-1-00104, etc.	Item 700.60 20% (items marked "A" and "B") Merchandise appraised on basis of American selling price	Item 700.70 15%, 13%, 12%, or 11% (items marked "A") Item 700.60 20% (items marked "B") Dutiable on basis of export value at invoiced f.o.b. prices specified for each article	International Seaway Trading Corp. v. U.S. (C.D. 4773) (items Marked "A") Agreed statement of facts (items marked "B")	Boston; Baltimore Footwear
P82/167	Maletz, J. October 14, 1982	Mitsubishi International Corp.	75-9-02325, etc.	Item 700.60 20% (items marked "A" and "B") Merchandise appraised on basis of American selling price	Item 700.70 15%, 13%, 12%, or 11% (items marked "A") Item 700.60 20% (items marked "B") Dutiable on basis of export value at invoiced f.o.b. prices specified for each article	International Seaway Trading Corp. v. U.S. (C.D. 4773) Agreed statement of facts (items marked "B")	New Orleans Footwear
P82/168	Maletz, J. October 15, 1982	Mitsubishi International Corp.	71-9-01115, etc.	Item 700.60 20% (items marked "A" and "B") Merchandise appraised on basis of American selling price	Item 700.70 15%, 13%, 12%, or 11% (items marked "A") Item 700.60 20% (items marked "B") Dutiable on basis of export value at invoiced f.o.b. prices specified for each article	International Seaway Trading Corp. v. U.S. (C.D. 4773) (items Marked "A") Agreed statement of facts (items marked "B")	Los Angeles; Wilmington, N.C. Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/169	Boe, J. October 15, 1982	Texas Instruments Incorporated	81-1-00026, etc.	Item 716.18 $0.67 each (solid state electronic watch modules) Item 715.05-716.18-720.28, or 715.05-716.18-720.24 $0.67 for each module and $0.048 for each case plus 9.8% of the case, or $0.67 for each module and $0.185 for each case plus 13.9% of the case (solid state electronic watches)	Item 688.36 5.3%	U.S. v. Texas Instruments (Appeal No. 81-23)	Lubbock (Houston) Solid state electronic watch modules and solid state electronic watches

P82/170	Boe, J. October 15, 1982	Texas Instruments Incorporated	81-2-00147	Item 716.18 $0.67 each (solid state electronic watch modules) Item 715.05-716.18-720.28, or 715.05-716.18-720.24 $0.67 for each module and $0.048 for each case plus 9.8% of the case, or $0.67 for each module and $0.185 for each case plus 13.9% of the case (solid state electronic watches)	Item 688.36 5.3%	U.S. v. Texas Instruments Incorporated (Appeal No. 81-23)	Lubbock (Houston) Solid state electronic watch modules and solid state electronic watches
P82/171	Ford, J. October 19, 1982	Wakunaga of America Co. Ltd.	81-9-01265	Item 140.75 13% (soybean powder) Item 140.60 35% (garlic powder)	Item 183.05 10% (powder mixture)	Agreed statement of facts	Los Angeles Mixture of garlic and soybean powder

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/514	Re, C.J. October 14, 1982	Nichimen Co., Inc.	75-6-01481	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Baltimore; Chicago; Philadelphia; New York: Los Angeles; San Francisco; Seattle; Longview (Portland, Oreg.); Portland, Oreg.; Charleston, S.C.; Savannah Not stated
R82/515	Watson, J. October 14, 1982	Bayer, Pretzfelder & Mills, Inc.	R59/11894, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios together with their accessories and parts
R82/516	Watson, J. October 14, 1982	Bayer, Pretzfelder & Mills, Inc.	R59/17812, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios together with their accessories and parts

R82/517	Watson, J. October 14, 1982	Bayer Pretzfelder & Mills Inc. B.P.M. International Ltd.	R61/21081, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values (schedule "A" merchandise) Appraised unit values less 7.5% thereof, net packed (schedule "B" merchandise)	Agreed statement of facts	New York Transistor radios together with their accessories and parts
R82/518	Watson, J. October 14, 1982	Bayer, Pretzfelder & Mills, Inc.	R61/21083, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios with their accessories and parts
R82/519	Watson, J. October 14, 1982	Gunze New York Inc.	79-1-00109, etc.	United States value	Appropriate values determined in accordance with guidelines set forth in CIE 30/81 of 7-20-81 attached to decision and judgment	Agreed statement of facts	New York Synthetic textile piece goods exported from Japan
R82/520	Watson, J. October 14, 1982	Hayim & Co.	R63/744, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R82/521	Watson, J. October 14, 1982	Kalimar Incorporated	R59/5121, etc.	Export value	F.o.b. invoice unit prices as shown on entry documents plus 20% of difference between f.o.b. unit invoice prices and appraised values, net, packed	Agreed statement of facts	St. Louis Binoculars
R82/522	Watson, J. October 14, 1982	Marubeni Iida (America) Inc.	R59/2890, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised value	Agreed statement of facts	New York Fabrics

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/523	Watson, J. October 14, 1982	Marubeni Iida (America), Inc.	R59/3075, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised value	Agreed statement of facts	New York Fabrics
R82/524	Watson, J. October 14, 1982	Marubeni Iida (America) Inc.	R58/10949, etc.	Export value	F.o.b. Unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabrics
R82/525	Re, C.J. October 15, 1982	Chain Bike Corporation	74-12-03462, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Philadelphia Not stated
R82/526	Ford, J. October 15, 1982	Kandu Industries, Inc.	81-10-01422	American selling price	$5.35, less 2%, per pair	Agreed statement of facts	Los Angeles Footwear
R82/527	Watson, J. October 15, 1982	Mataichi Corporation	R60/6336, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Handkerchief cloth
R82/528	Watson, J. October 15, 1982	Mitsubishi International Corp.	80-5-00803	American selling price (footwear on invoices 3 and 4 of entry 183111 of 3/5/77) Export value (footwear covered by entry 175723 of 2/23/77 and marked "A")	Appraised values less 23%, per pair (entry 183111 footwear, supra) Invoiced f.o.b. prices specified for each article; dutiable under item 700.35 at 8.5% (entry 175723 footwear, supra)	Agreed statement of facts	Los Angeles Footwear
R82/529	Watson, J. October 15, 1982	Henry Pollak Inc.	R62/2399, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Sweater

R82/530	Watson, J. October 15, 1982	F. B. Vandegrift & Co. Inc.	R68/13988, etc.	Export value (items marked "A" and "B")	F.o.b. unit invoice values plus 20% of difference between f.o.b. unit invoice values and appraised values, net packed (items marked "A") Appraised unit values less 7.5%, net packed (items marked "B")	Agreed statement of facts	Philadelphia Transistor radios together with their accessories and parts
R82/531	Watson, J. October 18, 1982	Elliot Import Corp.	236183-A, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Gloves, knit wool articles, etc.
R82/532	Watson, J. October 18, 1982	Jake Levin & Son, Inc.	R60/3534, etc.	Export value (schedule "A" and "B" merchandise)	Appraised unit values, less 7.5%, net packed (schedule "A" merchandise) Actual or agreed prices (less appraised values for cases for binoculars) shown on papers with entry documents plus 20% of difference between actual or agreed prices (less appraised values for cases for binoculars) and appraised values, net packed	Agreed statement of facts	Kansas City Binoculars
R82/533	Watson, J. October 18, 1982	LYF International, Inc.	80-6-01002	Export value	Invoice unit price, net packed	Agreed statement of facts	Los Angeles Footwear
R82/534	Watson, J. October 18, 1982	Marubeni Iida (America) Inc.	R59/1898, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised value	Agreed statement of facts	New York Fabrics
R82/535	Watson, J. October 18, 1982	Marubeni Iida (America) Inc.	R59/2062, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised value	Agreed statement of facts	New York Fabrics

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/536	Watson, J. October 18, 1982	J. C. Penney	R60/9087, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	Los Angeles Women's sweaters
R82/537	Watson, J. October 18, 1982	John A. Steer Co., et al.	R60/3001, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Binoculars
R82/538	Watson, J. October 18, 1982	Stone & Downer	R58/22596, etc.	Export value	Invoice unit prices as shown in entry documents, plus percentage shown on schedule A attached to decision and judgment to make f.o.b. unit invoice prices, plus 20% of difference between f.o.b. unit prices and appraised values net, packed	Agreed statement of facts	Boston Binoculars
R82/539	Watson, J. October 18, 1982	Stone and Downer	R59/10616, etc.	Export value	Invoice unit prices as shown in entry documents, plus percentage shown on schedule A attached to decision and judgment to make f.o.b. unit invoice prices, plus 20% of difference between f.o.b. unit prices and appraised values net, packed	Agreed statement of facts	Boston Binoculars
R82/540	Landis, J. October 19, 1982	Oscar Eggan Associates, Inc.	R63/14652	Cost of Production	Invoice unit values net packed	U.S. v. Oscar E. Eggan (C.A.D. 939)	Los Angeles Inch size ball bearings

R82/541	Watson, J. October 19, 1982	Bayer, Pretzfelder & Mills, Inc.	R61/7679, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios with their accessories and parts
R82/542	Watson, J. October 19, 1982	Harpers International, Inc.	R59/1606, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values, net packed	Agreed statement of facts	New York Transistor radios (including germanium radios), together with any specified accessories and parts
R82/543	Watson, J. October 19, 1982	Imported Rug Associates Ltd.	R65/13440, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco/Oakland Rugs
R82/544	Watson, J. October 19, 1982	Kanematsu N.Y. Inc.	R61/5002, etc.	Export value (schedule "A" and "B" merchandise)	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values (schedule "A" merchandise) Appraised unit values less 7.5% thereof, net packed (schedule "B" merchandise)	Agreed statement of facts	New York Radio cases, earphones, earphone cases and batteries, entireties
R82/545	Watson, J. October 19, 1982	Marubeni Iida (America) Inc.	R59/2076, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabrics, etc.
R82/546	Watson, J. October 19, 1982	Marubeni Iida (America) Inc.	R59/7322, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Charleston, S.C. Fabrics

Appeals to U.S. Court of Appeals for the Federal Circuit

APPEAL 83-515.—BAR BEA TRUCK LEASING CO., INC., BAR-MAR WAREHOUSE CO., INC. *v.* UNITED STATES—28 USC 1581(i) Residual—Cross-Appeal From Slip Op. 82-64, filed on October 13, 1982.

124

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *October 27, 1982.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the matter of CERTAIN CUPRIC HYDROXIDE FORMULATED FUNGICIDES AND CUPRIC HYDROXIDE PREPARATIONS USED IN THE FORMULATION THEREOF	Investigation No. 337-TA-128

Notice of Commission Decision Not To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination terminating Stoller Chemical Co. and Three Jay Laboratories as respondents in the above-captioned investigation. Accordingly, as of November 19, 1982, the initial determination, will become the Commission's determination with respect to this matter.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in sections 335 and 337 of the Tariff Act of 1930 (19 U.S.C. §§ 1335, 1337) and in sections 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 F.R.

25134, June 10, 1982; to be codified at 19 C.F.R. §§ 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On September 17, 1982, complainant Kocide Chemical Corp., and respondents Stoller Chemical Corp. ("Stoller") and Three Jay Laboratories, Inc. ("Three Jay") jointly moved (Motion No. 128-4) to terminate the Commission's investigation with respect to Stoller and Three Jay. On October 4, 1982, the presiding officer granted Motion No. 128-4 and terminated Stoller and Three Jay as respondents in investigation No. 337-TA-128, *Certain Cupric Hydroxide Formulated Fungicides and Cupric Hydroxide Preparations Used in the Formulation Thereof.*

Pursuant to rule 210.53(h)(2), an initial determination of the presiding officer under rule 210.53(c) becomes the determination of the Commission fifteen (15) days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 128-4, the papers filed in connection therewith, and the initial determination of the presiding officer, the Commission finds no grounds for review of the initial determination.

Copies of the presiding officer's initial determination and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0375.

By order of the Commission.

Issued: October 20, 1982.

KENNETH R. MASON,
Secretary.

CERTAIN SEAMLESS STEEL PIPES AND TUBES FROM JAPAN

AGENCY: United States International Trade Commission.

ACTION: Change of Date of Public Hearing.

SUMMARY: Notice is hereby given that the public hearing to be held in connection with United States International Trade Commission investigation No. 731-TA-87 (Final), certain seamless steel pipes and tubes from Japan, will begin at 10:00 a.m., Wednesday, January 12, 1983, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. A hearing date of November 3, 1982, had previously been announced in the Commission's notice of institution of investigation

as published in the Federal Register of September 29, 1982 (47 F.R. 42847). Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) December 16, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10:00 a.m., on December 20, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before January 5, 1982. The Commission's final action, notification of the Department of Commerce, is similarly postponed until February 14, 1982. These changes are made pursuant to the Department of Commerce's granting of an extension of time as a result of a request by an exporter involved in this investigation. (See 47 F.R. 44594).

By order of the Commission.

Issued: October 20, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN MINIATURE, BATTERY-OPERATED, ALL-TERRAIN, WHEELED VEHICLES

Investigation No. 337-TA-122

Notice of Termination of Respondents Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of the investigation with respect to respondents LJN Toys, Ltd. (LJN), LJN Toys (Hong Kong) Ltd. (LJN HK), and Universal International (Holdings) U.S.A., Ltd. (Universal) based on a settlement agreement.

SUPPLEMENTARY INFORMATION: Complainants and respondents LJN, LJN HK, and Universal, supported by the Commission investigative attorney, moved on July 19, 1982, to terminate the investigation as to those respondents on the basis of a settlement agreement.

On September 22, 1982, the Commission published a notice in the Federal Register requesting comment from the public and from interested Federal agencies regarding whether the investigation should be terminated as to the aforementioned respondents on the basis of the settlement agreement (47 F.R. 41880). The comment period, shortened to 15 days, expired on October 7, 1982. No comments were received.

On October 14, 1982, the Commission granted the motion and terminated this investigation as to LJN, LJN HK, and Universal on

the basis of the settlement agreement. The Commission concluded that such termination would not adversely affect the public interest.

Notice of this investigation was published in the Federal Register of May 19, 1982 (47 F.R. 21638).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0480.

By order of the Commission.

Issued: October 19, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN TEXTILE SPINNING FRAMES AND AUTOMATIC DOFFERS THEREFOR — Investigation No. 337-TA-124

Notice of Commission Review of Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review on its own motion an initial determination granting a motion for summary judgment that the Schubert & Salzer respondents have not as a matter of law violated section 337, and terminating the investigation with respect to such respondents.

AUTHORITY: The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in section 210.55 of the Commission's Rules of Practice and Procedure (19 CFR § 210.55, as amended at 47 F.R. 25137 (June 10, 1982).

SUPPLEMENTARY INFORMATION: The initial determination was issued in response to a motion for summary determination and termination as to respondents Schubert & Salzer Machinefabrik A.G. and Schubert & Salzer Machine Works.

The initial determination granted the motion for summary determination and terminated the investigation as to the Schubert & Salzer respondents. None of the parties to the investigation petitioned for review of the initial determination, and no government agency has recommended it. However, the Commission has deter-

mined that there are certain issues of law that warrant review of the initial determination.

Specifically, the scope of the Commission's review shall be limited to the following issues: (1) whether there are no genuine issues of material fact with respect to whether the S & S respondents have violated section 337; and (2) assuming a summary determination was appropriate, whether the Schubert & Salzer respondents have not, as a matter of law, violated section 337.

Copies of the presiding officer's initial determination, the Commission Action and Order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Sheila Landers, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

By order of the Commission.

Issued: October 19, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-89 (Final)

PRESTRESSED CONCRETE STEEL WIRE STRAND FROM THE UNITED KINGDOM

AGENCY: U.S. International Trade Commission.

ACTION: Institution of final antidumping investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-89 (Final) to determine, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom (U.K.) of steel wire strand for prestressing concrete (PC strand), provided for in item 642.11 of the Tariff Schedules of the United States, which are alleged to be sold at less than fair value (LTFV).

EFFECTIVE DATE: October 15, 1982.

FOR FURTHER INFORMATION CONTACT: David Coombs, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone 202-523-1376.

SUPPLEMENTARY INFORMATION:

Background.—On March 4, 1982, a petition was filed with the Commission and the U.S. Department of Commerce by counsel for

American Spring Wire Corp., Armco Inc., Bethlehem Steel Corp., Florida Wire & Cable Co., Pan American Ropes Inc., and Shinko Wire America Inc., alleging that an industry in the United States is materially injured or is threatened with material injury by reason of imports of PC strand from the U.K., which are alleged to be sold at LTFV. On April 14, 1982, the Commission determined, pursuant to § 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports from the U.K. which were alleged to be sold at LTFV (47 F.R. 18200). On October 6, 1982, Commerce issued a preliminary determination that imports of PC strand from the U.K. are being sold in the United States at LTFV (47 F.R. 44132). Accordingly, the Commission is instituting this final antidumping investigation.

This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207 (1981)), as amended, and particularly subpart B thereof.

Written submissions.—Any person may submit to the Commission on or before December 29, 1982, a written statement of information pertinent to the subject matter of the investigation. A signed original and fourteen copies of such statements must be submitted. All written submissions, except for confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted in conformance with the requirements of section 201.6 of the Commission's Rules (19 CFR § 201.6 (1981)). Each sheet of information for which confidential treatment is desired must be clearly marked at the top "Confidential Business Data". All written submissions, except for confidential business data, will be available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Rules (19 CFR § 201.11), not later than twenty-one (21) days after the publication of this notice in the *Federal Register.* Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's Rules (19 CFR § 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list) and a certificate of service must accompany the document. Absent a certificate of serv-

ice, the Secretary shall not accept such document for filing (19 CFR § 201.16(c)).

Public hearing.—The Commission will hold a public hearing in connection with this investigation on January 4, 1983, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 10:00 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 13, 1982. Persons desiring to appear at the hearing and make oral presentations may file a prehearing brief and should attend a prehearing conference to be held at 10:00 a.m., on December 15, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed on or before December 29, 1982.

A staff report containing preliminary findings of facts will be made available to all interested parties on December 17, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules (19 CFR § 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with rule 207.22 (19 CFR § 207.22). Posthearing briefs will also be accepted within a time specified at the hearing.

Public inspection.—All written submissions, except for confidential business information, will be available for public inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (919 CFR Part 207, 47 F.R. 6182, February 10, 1982; 47 F.R. 12792, March 25, 1982; 47 F.R. 33682, August 4, 1982), and part 201, subparts A through E (19 CFR Part 201, 47 F.R. 6182, February 10, 1982; 47 F.R. 13791, April 1, 1982; 47 F.R. 33682, August 4, 1982).

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12 (1981)).

By order of the Commission.

Issued: October 18, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 701-TA-200 (Preliminary)

AUTOMATED FARE COLLECTION EQUIPMENT AND PARTS THEREOF FROM FRANCE

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigation and scheduling of a public conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of an investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of certain automated fare collection equipment and parts thereof provided for in item nos. 676.15, 676.25, 676.30, 676.52, 678.40, and 678.50 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of France.

EFFECTIVE DATE: October 18, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, U.S. International Trade Commission; telephone 202-523-1369.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed October 12, 1982, on behalf of Cubic Western Data, Inc., San Diego, California. A copy of this petition is available for public inspection in the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition or by November 26, 1982 (19 CFR § 207.17). Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission not later than seven (7) days after the publication of this notice in the Federal Register (19 CFR § 201.11). Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice. This investigation will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 47 F.R. 6189, February 10, 1982), particularly subpart B thereof.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting documents in connection with the investigation shall, in addition to complying with section 201.8 of the Commission Rules (19 CFR §201.8), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service.

This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submission.—Any person may submit to the Commission on or before November 4, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen (14) copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., on November 2, 1982, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. James McClure, telephone 202/523-0439, not later than October 28, 1982, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207, as amended by 47 F.R. 6182, February 10, 1982, and 47 F.R. 33682, August 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6182, February 10, 1982, 47 F.R. 13791, April 1, 1982, and 47 F.R. 33682, August 4, 1982). Further information concerning the conduct of the conference will be provided by Mr. McClure.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

Issued: October 18, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN MINIATURE, BATTERY-OPERATED, ALL-TERRAIN, WHEELED VEHICLES

Investigation No. 337-TA-122

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation upon a finding of no violation of section 337 of the Tariff Act of 1930.

SUPPLEMENTARY INFORMATION: On the basis of a complaint filed on April 23, 1982, the Commission on May 19, 1982, published in the Federal Register (47 F.R. 21638) a notice of institution of an investigation pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). The Commission's investigation covered alleged unfair methods of competition and unfair acts in the unauthorized importation and sale of certain miniature, battery-operated, all-terrain, wheeled vehicles alleged to infringe certain claims of U.S. Letters Patent 4,306,375 and to involve a false designation of origin.

On October 7, 1982, the Commission determined that there was no violation of section 337 in investigation No. 337-TA-122 in the importation or sale of the miniature, battery-operated, all-terrain, wheeled vehicles in question.

Copies of the Commission's Action and Order, the Commissioners' opinions, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

By order of the Commission.

Issued: October 15, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN CUPRIC HYDROXIDE FORMULATED FUNGICIDES AND CUPRIC HYDROXIDE PREPARATIONS USED IN THE FORMULATION THEREOF } Investigation No. 337-TA-128

ORDER NO. 13: ORDER CANCELLING TEO HEARING

By a letter of October 13, 1982 to the presiding officer, filed with the Commission Secretary, complainant Kocide Chemical Corp. withdrew its request for a temporary exclusion order. Accordingly, notice is hereby given that the hearing on temporary relief, scheduled to commence on November 15, 1982, is cancelled.

The Secretary shall publish this order in the Federal Register.

Issued: October 15, 1982.

JUDGE DONALD K. DUVALL,
Presiding Officer.

Investigations Nos. 104-TAA-11 and 104-TAA-12

FLOAT GLASS FROM BELGIUM AND ITALY

AGENCY: U.S. International Trade Commission.

ACTION: Institution of countervailing duty investigations.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. § 1671 note), the U.S. International Trade Commission is instituting these countervailing duty investigations to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of float glass from Belgium and Italy provided for under items 543.21 through 543.69 of the Tariff Schedules of the United States, covered by outstanding countervailing duty orders, if the orders were to be revoked.

EFFECTIVE DATE: October 8, 1982.

FOR FURTHER INFORMATION CONTACT: Vera Libeau, Supervisory Investigator, Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0368.

SUPPLEMENTARY INFORMATION:

Background.—On January 7, 1976, the Department of the Treasury (Treasury) issued countervailing duty order T.D. 76-9, under section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303), on float glass imported from Italy (41 F.R. 1274).

Also on January 7, 1976, Treasury determined not to issue a countervailing duty order on float glass imported from Belgium and published a "Notice of Final Countervailing Duty Determination" (41 F.R. 1299). The petitioner challenged Treasury's negative determination on this case in the U.S. Customs Court, and on July 17, 1980, the Court ruled that float glass imported from Belgium did in fact benefit from bounties or grants within the meaning of section 303. Therefore, a countervailing duty order was issued (46 F.R. 10905, Feb. 4, 1981).

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 (P.L. 96-39) became effective, and on January 2, 1980, the authority for administering the countervailing duty statutes was transferred from Treasury to the Department of Commerce (Commerce).

As required by section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. § 1675(a)(1)), Commerce has conducted its first annual ad-

ministrative review of the countervailing duty orders on float glass from Belgium and Italy. As a result, Commerce determined with respect to Italy that, for the period of review, the net subsidy conferred on the production of float glass by Fabbrica Pisana, S.p.A. and Societa Italiana Vetro, S.p.A. (SIV) was 15.41 percent and 15.53 percent, respectively, of the f.o.b. invoice price (47 F.R. 5026, Feb. 3, 1982). Commerce also determined that, for the period of review, the aggregate net subsidy on float glass from Belgium was less than 0.5 percent (0.29 percent) and therefore *de minimis* (47 F.R. 32467, July 27, 1982).

Public hearing.—The Commission will hold a public hearing in connection with these investigations on December 16, 1982, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m. Requests to appear at the hearing should be filed with the Office of the Secretary, U.S. International Trade Commission, not later than the close of business (5:15 p.m.) on November 24, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing briefs and should attend a prehearing conference to be held at 10:00 a.m., on November 29, 1982, in room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed with the Commission on or before December 13, 1982.

A staff report containing preliminary findings of fact in these investigations will be available to all interested parties on December 2, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules (19 CFR § 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22. Posthearing briefs must be filed with the Commission by no later than the close of business, December 23, 1982.

Written submissions.—Any person may submit to the Commission on or before December 23, 1982, written statements of information pertinent to the subject matter of the investigations. A signed original and fourteen true copies of such statements must be submitted in accordance with § 201.8 of the Commission's Rules (19 CFR § 201.8). All written submissions, except confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Rules (19 CFR § 201.6).

Participation in the investigation.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Rules (19 CFR § 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's Rules (19 CFR § 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigations (as identified by the service list) and a certificate of service must accompany the document. Absent a certificate of service, the Secretary shall not accept such document for filing (19 CFR § 201.16(c)).

Public inspection.—All written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

This notice is published pursuant to § 207.20 of the Commission's Rules (19 CFR § 207.20).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207, 47 F.R. 6182, February 10, 1982; 47 F.R. 12792, March 25, 1982; 47 F.R. 33682, August 4, 1982), and part 201, subparts A through E (19 CFR part 201, 47 F.R. 6182, February 10, 1982; 47 F.R. 13791, April 1, 1982; 47 F.R. 33682, August 4, 1982).

By order of the Commission.

Issued: October 14, 1982.

KENNETH R. MASON,
Secretary.

In the matter of CERTAIN POWER WOODWORKING TOOLS, THEIR PARTS, ACCESSORIES AND SPECIAL PURPOSE TOOLS	Investigation No. 337-TA-115

Notice of Commission Request for Comments Concerning Proposed Termination of Six Respondents Based on Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comments on proposed termination of six respondents in the above-captioned investigation based on settlement agreements.

SUMMARY: Complainant Shopsmith, Inc., has jointly moved with respondents King Feng Fu Machinery Works Co., Ltd. (KFF), ABCA, Inc. (ABCA), Johnson Metal Industries Co., Ltd. (Johnson Metal), Master Woodcraft and Hobby Machine Co. (Master Woodcraft), United States Metals Service, Inc. (United Metals), and Big Joe Industrial Corp. (Big Joe) in several motions (KFF and ABCA, motion No. 115–13, filed Aug. 2, 1982; United Metals, motion No. 115–14, filed Aug. 3, 1982; Johnson Metal and Master Woodcraft, motion No. 115–15, filed Aug. 16, 1982; Big Joe, motion No. 115–16, filed Aug. 16, 1982) to terminate the investigation with regard to those respondents on the basis of written settlement agreements. This notice contains a nonconfidential synopsis of the settlement agreements involved and seeks comments on the proposed terminations based thereon.

DATES: Comments will be considered if received within thirty (30) days of the date this notice appears in the Federal Register. Comments should conform to section 201.8 of the Commission Rules of Practice and Procedure (19 C.F.R. § 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0189.

SUPPLEMENTARY INFORMATION: Notice of the institution of this investigation was published in the Federal Register on January 28, 1982 (47 F.R. 4165).

SYNOPSIS OF THE SETTLEMENT AGREEMENTS:

KFF (foreign manufacturer/exporter) and ABCA (U.S. importer). The design of the KFF tool in controversy will be changed as soon as possible but not later than 4 months after the execution of this agreement. During the 4-month period after the execution of this agreement, KFF and ABCA will maintain approximately the same ratio of inventory to sales as during the 4-month period preceding execution of the agreement. At the end of the 4-month period, KFF and ABCA will sell only redesigned tools.

KFF will include either a full name and address or the words "made in Taiwan" in its sales literature.

KFF and ABCA will not use photographs of Shopsmith products or the words "Shopsmith" or "Shopmate" in their marketing, promotion, and sales efforts.

United Metals (U.S. importer). United Metals agrees that it will import, market, and sell only redesigned tools manufactured by

either KFF or Johnson Metal. It further agrees not to redesign or alter tools received from Johnson Metal or KFF except as required or allowed by this agreement.

Promotional material will clearly indicate country of origin, and promotional material and methods will not substantially copy those of Shopsmith, nor contain photographs or trademarks of Shopsmith.

Neither party will state or imply that the tools it is selling are manufactured by or under license from the other party.

Johnson Metal (foreign manufacturer/exporter) and Master Woodcraft (U.S. importer). Johnson Metal tools sold in the United States will be redesigned in a number of specified ways to increase the dissimilarity between the tools of Johnson Metal and Shopsmith. The changes will be implemented within 4 to 8 months after the execution of their agreement. After such time only redesigned tools will be sold in the United States, except that Master Woodcraft may sell the remaining inventory in its possession at the execution of their agreement.

Each party agrees to use its best efforts to prevent its agents or distributors from engaging in actions in contravention of the agreement. Each party agrees not to take action against the other based on the action of any such agent unless the party participated in or directly assisted the agent's action.

No party will suggest that its tools are manufactured in a country other than the one in which they are manufactured.

No party will copy or use the sales literature of the other party.

No party will state or imply that its tools are manufactured by or under license from any other party.

Big Joe (U.S. importer). Big Joe agrees not to make any alterations to the redesigned tools received from Johnson Metal or KFF other than those required or allowed by this agreement.

Big Joe will not copy or use advertising and promotional material of Shopsmith. Big Joe will not use photographs of Shopsmith products or the words "Shopsmith" or "Shopmate." Big Joe will not indicate or imply that the tools Big Joe is marketing are manufactured by or under license from Shopsmith.

Big Joe is permitted to advertise and dispose of the remaining multipurpose woodworking tools it has in inventory.

COMMENTS REQUESTED: In light of the Commission's duty to consider the public interest in this investigation, the Commission requests written comments from interested persons concerning the effect of the termination of these respondents by settlement agreements upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. **Written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or**

portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open for public inspection in the Secretary's Office, as are copies of the settlement agreements with confidential information deleted.

By order of the Commission.

Issued: October 14, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 701-TA-199 (Preliminary)

SOFTWOOD FENCE FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: October 7, 1982.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of an investigation under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of softwood fence, provided for in item 200.75 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Furlow (202-724-0068), Chief of the Agriculture, Fisheries, and Forest Products Division, Office of Industries, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed October 7, 1982, on behalf of the United States Coalition for Fair Canadian Lumber Imports, a group composed of 8 trade associations and more than 350 U.S. producers of softwood lumber products. A copy of this petition is available for public inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. The Commission must make its determination in this investigation within 45 days

after the date of the filing of the petition or by November 22, 1982 (19 CFR § 207.17). Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, February 10, 1982), not later than seven (7) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in this investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, February 10, 1982, and 47 F.R. 13791, April 1, 1982), serve a copy of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR § 201.16(b), as amended by 47 F.R. 33682, August 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before November 10, 1982, a written statement of information pertinent to the subject matter of this investigation (19 CFR § 207.15, as amended by 47 F.R. 6190, February 10, 1982). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR § 201.8, as amended by 47 F.R. 6188, February 10, 1982, and 47 F.R. 13791, April 1, 1982).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on November 4, 1982, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisor for the investigation, Mr. Edward Furlow, telephone 202–724–0068, not later than October 29, 1982, to arrange for their appearance. **Parties in support of the imposition of countervailing duties**

in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207, as amended by 47 F.R. 6182, February 10, 1982, and 47 F.R. 33682, August 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6182, February 10, 1982, 47 F.R. 13791, April 1, 1982, and 47 F.R. 33682, August 4, 1982). Further information concerning the conduct of the conference will be provided by Mr. Furlow.

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR § 207.12).

Issued: October 12, 1982.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

Customs Service Decisions

U. S. GOVERNMENT PRINTING OFFICE : 1982 O - 383-553

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)